

# REGULATIONS OF THE REAL ESTATE COMMISSIONER

*As contained in the California Code of Regulations*

## TITLE 10. INVESTMENT CHAPTER 6. REAL ESTATE COMMISSIONER

*(Article 1 repealed effective July 31, 1983.)*

### Article 2. General Definitions and Short Form References

#### **2705. General Definitions and Short Form References.**

Unless otherwise expressly indicated or compelled by the context in which used, words, phrases and short form references appearing in this Chapter shall have meanings as ascribed herein.

- (a) "Advertising" – Any written or printed communication, or oral communication made in accordance with a text or outline that has been reduced to written form, which is published for the purpose of inducing persons to purchase or use a product or service.
- (b) "Applicant" – A person applying to the Department of Real Estate for a license, permit, public report or other entitlement.
- (c) "Code" – The Business and Professions Code.
- (d) "Commissioner" – The Real Estate Commissioner of the State of California.
- (e) "Department" – The Department of Real Estate of the State of California.
- (f) "Examination" – An examination to qualify for any license issued under authority of the Real Estate Law.
- (g) "License" – Any license issued under authority of the Real Estate Law.
- (h) "Permit" – Any authorization or entitlement issued by the commissioner to engage in a transaction or course of conduct for which a permit is required under the Real Estate Law or Subdivided Lands Law.
- (i) "Public Report" – The report issued by the commissioner under authority of Section 11018 of the Code.
- (j) "Real Estate Law" – Part 1 of Division 4 of the Code.
- (k) "Subdivision interests" – Lots, parcels, units, undivided interests, shares, time-share estates or time-share uses subject to regulation under the provisions of Chapter 1, Part 2, Division 4 of the Code.
- (l) "Subdivision Law" or "Subdivided Lands Law" – Chapter 1 of Part 2 of Division 4 of the Code.
- (m) "Common interests" – Property owned or controlled by, and/or services furnished to, owners, lessees or persons having the exclusive right to the use of subdivision interests, by an association comprising the separate owners of said interests in those subdivisions enumerated in Section 11004.5 of the Code.

#### **2708. Permit Reform Act Definitions.**

The terms defined in the Permit Reform Act of 1981, when used in Section 2709, shall have the meaning set forth in that act. In addition, the following definitions shall apply:

- (a) An application for a permit, license, endorsement, certificate or public report is considered complete when all documents, information and fees required by the relevant statutes and regulations are received by the Department.
- (b) Notifications by the Department to applicants for a permit occur on the date the Notifications are postmarked.
- (c) "Days" means calendar days.

#### **2709. Permit Processing Times.**

The first column below describes the types of permit applications subject to these rules. Column (a) sets forth the period dating from receipt of the application within which the Department must inform the applicant, in writing, that the application is complete and accepted for filing or that the application is deficient and what information is required to make the application complete. Column (b) prescribes the period dating from the filing of a complete

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

application (determined by the date of notification that application is complete) within which the Department must reach a permit decision.

Columns (c), (d), and (e) set forth the Department's median, minimum and maximum times, respectively, for processing a permit from the receipt of the initial application to the final permit decision. Time periods are in days.

	(a)	(b)	(c)	(d)	(e)
PERMIT OR LICENSE	Notif.	Dec.	Med.	Min.	Max.
1. Original R.E. Broker License	21	14	18	2	432
2. Original R.E. Salesperson License	30	21	38	2	527
3. Late Renewal Broker License	21	14	12	2	818
4. Late Renewal Salesperson License	30	21	32	8	736
5. Late Renewal M.O.G. License	15	12	16	2	138
6. Prepaid Rental Listing Service License	30	15	37	2	573
7. Out-of-State Timeshare Permit	45	60	237	54	524
8. Out-of-State Subdivision Registration	10	10	20	1	40
9. Standard Subdivision Public Report	10	10**	95	4	595
10. Common Interest Subdivision Public Report	10	15**	150	1	587
11. Continuing Education Course Approval	45	30	65	3	330
12. Equivalent Course of Study Approval	45	30	163	87	264

\*\* Following a determination that the application is quantitatively and qualitatively complete pursuant to Business and Professions Code §11010.2.

### Article 3. License Applications, Fees and Changes

#### 2710. Applications and Notices of Change of Status.

(a) A person shall apply for an original license under the provisions of the Real Estate Law on the form of application prescribed by the Department. The applicant shall complete and sign the application form and submit it and the fee for the license in question to an office of the Department.

(b) A licensee applying for renewal of a real estate license shall comply with the provisions of subdivision (a) and with the following provisions:

(1) The application shall be submitted to the Department not more than 90 days before the expiration of the license to be renewed.

(2) The applicant shall submit on forms prescribed by the Department, information to establish that the applicant has satisfied the continuing education prerequisites for license renewal in Article 2.5 of Chapter 3 of the Real Estate Law.

(c) Notice of changes in license information or status required to be submitted to the Department under provisions of the Real Estate Law and regulations of the Commissioner shall be given on forms prescribed by the Department not later than five days after the effective date of the change unless otherwise provided in the applicable statute or regulation.

#### 2715. Business and Mailing Addresses of Licensees.

Every broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his principal place of business for brokerage activities, the address of each branch business office and his current mailing address, if different from the business address.

Every broker who is acting in the capacity of a salesperson to another broker under written agreement shall maintain on file with the commissioner the address of the business location where he expects to conduct most of the activities for which a license is required and his current mailing address.

A real estate salesperson shall maintain on file with the commissioner his current mailing address, and when applicable, the address of the principal business office of the broker to whom the salesperson is at the time licensed.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

Whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, he shall notify the commissioner thereof not later than the next business day following the change.

This section shall apply to the holder of a real estate license who fails to renew it prior to the period for which it was issued and who is otherwise qualified for such license as set forth in Section 10201 of the Code.

### **2716. License Fees.**

(1) The license fee for the real estate broker license under Section 10210 of the Code shall be \$218.

(2) The license fee for the real estate salesperson license under Section 10215 of the Code shall be \$129.

(3) The salesperson license fee, under Section 10215 of the Code, for an applicant qualifying pursuant to Section 10153.4 of the Code who has not satisfied all of the educational requirements prior to issuance of the license, shall be \$178.

(4) The late license renewal fee under Section 10201 of the Code shall be \$327 for a real estate broker or restricted real estate broker license and \$193 for a real estate salesperson or restricted real estate salesperson license.

(5) The license fee for the restricted real estate broker license under Section 10209.5 of the Code shall be \$218.

(6) The license fee for the restricted real estate salesperson license under Section 10214.5 of the Code shall be \$129.

(7) The fees for all licenses or examinations, except those specified in this regulation or as otherwise specifically provided for in the regulations, shall be the maximum fees set forth in the Real Estate Law.

### **2716.5. Special Fee.**

A licensee or applicant who is named on a certified list or supplemental list pursuant to Section 11350.6 of the Welfare and Institutions Code shall pay a special fee in the amount of ninety-five dollars (\$95.00) for each time his or her name is placed on such list. If the licensee or applicant fails to pay such fee, the commissioner shall refuse to issue a license or temporary license or to reinstate a suspended license.

### **2717. Allocation of Fees to Education and Research Account.**

Pursuant to Section 10450.6 of the Code, no portion of the amount of the license fee collected under Part 1 of Division 4 of the Code shall be credited to the Education and Research Account.

### **2718. Legal Presence Requirements.**

(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual applying for a benefit.

(b) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1995, (Pub. L. No. 104-193 (PRWORA)), (8 U.S.C. § 1621), and notwithstanding any other provision of law, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 et seq.), or aliens paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)), for less than one year, are not eligible to receive benefits as defined in this Section and as set forth in Sections 10000 and following of the Code.

(c) For purposes of this Section, a benefit is an original real estate broker license, real estate broker officer license, real estate salesperson license, prepaid rental listing service license, mineral, oil, and gas broker license and a renewal of such licenses which has not been previously qualified pursuant to this Section. A qualified alien without permanent status shall provide proof of qualification for each renewal of a license. A benefit does not include a payment from the Real Estate Recovery Account.

(d) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive a benefit, is, under Section 431(b) of the PRWORA (8 U.S.C. § 1641(b)), any of the following:

(1) An alien lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 et seq.).

(2) An alien who is granted asylum under Section 208 of the INA (8 U.S.C. § 1158).

(3) A refugee who is admitted to the United States under Section 207 of the INA (8 U.S.C. § 1157).

(4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for a period of at least one year.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(5) An alien whose deportation is being withheld under Section 243(h) of the INA (8 U.S.C. § 1253(h)) (as in effect immediately before the effective date of Section 307 of division C of Public Law 104-208) or Section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) (as amended by Section 305 (a) of division C of Public Law 104-208).

(6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980. (8 U.S.C. § 1153 (a)(7)) (See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment.")

(7) An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).

(8) An alien who meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:

(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien to become self-sufficient following separation from the abuser.
2. The benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.
3. The benefits are needed due to a loss of financial support resulting from the alien's separation from the abuser.
4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.
5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed, or cloth children or to put children into a day care for fear of being found by the abuser).
7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.
8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.
9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.

(C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:

1. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A) (ii),(iii) or (iv),

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

2. Classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B) (ii) or (iii)).

3. Suspension of deportation and adjustment of status pursuant to section 244(a)(3) of the INA (as in effect prior to April 1, 1997) [Pub.L. 104-208, sec. 501 (effective Sept. 30, 1996, pursuant to sec. 304), Pub.L. 105-33, sec. 81 (effective pursuant to sec. 5582)] (codified as cancellation of removal under section 240A of such Act [8 U.S.C. § 1229b] (as in effect prior to April 1, 1997)).

4. Status as a spouse or child of a United States citizen pursuant to clause (i) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(i)) or classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(i)), or

5. Cancellation or removal pursuant to Section 240A(b)(2) of the INA (8 U.S.C. § 1229b(b)(2)),

(D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(9) An alien who meets all of the conditions of subparagraphs (A), (B), (C), (D) and (E) below:

(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

(B) The alien did not actively participate in such battery or cruelty.

(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser.

2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.

5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.

(D) The alien meets the requirements of subsection (d)(8)(C) above.

(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(e) For purposes of this section, "nonimmigrant" is defined the same as in Section 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)).

(f) A person applying for a benefit for which the applicant is otherwise qualified, must do all of the following:

(1) Declare himself or herself to be a citizen of the United States or a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)). The applicant shall declare that status by completing and signing the "State Public Benefits Statement" (DRE Form 205).

(2) Present documents of a type acceptable to the Immigration and Naturalization Services (INS) and as set forth in List A or List B of DRE Form 205 and which serve as reasonable evidence of the applicant's declared status.

(3) Where the documents presented do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents should be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Department should request verification from the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant should be referred to the local INS office to obtain documentation.

(g) Where authorized by the INS, the information presented by an alien as reasonable evidence of the alien's declared immigration status must be submitted to the INS for verification through the Systematic Alien Verification for Entitlements (SAVE) system procedures as follows:

(1) Unless the primary SAVE system is unavailable for use, the primary SAVE system verification must be used to access the biographical/immigration status computer record contained in the Alien Status Verification Index maintained by the INS. Subject to subparagraph (2), this procedure must be used to verify the status of all aliens who claim to be qualified aliens and who present an INS-issued document that contains an alien registration or alien admission number.

(2) In any of the following cases, the secondary SAVE system verification procedure must be used to forward to INS copies of INS documents evidencing an alien's status as a qualified alien, as a nonimmigrant alien under the INA, or as an alien paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)), for less than one year:

(A) The primary SAVE system is unavailable for verification.

(B) A primary check of the Alien Status Verification Index instructs the Department to "institute secondary verification."

(C) The document presented indicates immigration status but does not include an alien registration or alien admission number.

(D) The Alien Status Verification Index record includes the alien registration or admission number on the document presented by the alien but does not match other information contained in the document.

(E) The document is suspected to be counterfeit or to have been altered.

(F) The document includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.

(G) The document is a fee receipt from INS for replacement of a lost, stolen, or unreadable INS document and the applicant has failed to submit his or her registration or alien admission number.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(H) The document is one of the following: an INS Form I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Record of Permanent Residence, an Arrival-Departure Record (INS Form I-94) or a foreign passport stamped "PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for a benefit.

(I) If the secondary SAVE system is available and is used to verify status, provided that the alien has completed and signed Form 205 under penalty of perjury, and has presented documents of a type acceptable to the Immigration and Naturalization Services (INS) and as set forth in List B of DRE Form 205 and which serve as reasonable evidence of the applicant's declared status, eligibility for the benefit, except a payment from the Recovery Account, shall not be delayed, denied, reduced or terminated while the status of the alien is verified. If the Department determines that any documents have been falsified or that the applicant is not entitled to the benefit, the Department shall suspend such benefit.

(h) The applicant may present documents described in subparagraphs (f) (1), (2) and (3) above which serve as reasonable evidence of the applicant's declared status prior to applying for a benefit or prior to applying for the renewal of a benefit.

(i) If the primary and secondary SAVE systems are unavailable for verification for purposes of establishing an alien's eligibility for a benefit for which the applicant is otherwise qualified, all of the following must be met:

(1) The applicant who is not a citizen of the United States must declare himself or herself to be a qualified alien under subsection (d), a nonimmigrant alien under subsection (e), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)). The alien shall declare that status through use of the DRE Form 205.

(2) The alien must present documents or temporary documents issued by the INS which serve as reasonable evidence of the applicant's declared status. A fee receipt from the INS for replacement of a lost, stolen, or unreadable INS document and an alien registration or alien admission number from INS are temporary documents considered reasonable evidence of the alien's declared status.

(3) Upon receipt of the documents described in subparagraphs (1) and (2) above, and provided that the alien has completed and signed Form 205 under penalty of perjury, eligibility for the benefit, except a payment from the Recovery Account, shall not be delayed, denied, reduced or terminated while the status of the alien is verified. If the Department determines that any such documents have been falsified or that the applicant is not entitled to the benefit, the Department shall suspend such benefit.

(j) Where the documents presented to verify status do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents should be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Department should request verification from the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant should be referred to the local INS office to obtain documentation.

(k) If the INS advises that the applicant has citizenship status or immigration status which makes him or her a qualified alien under the PRWORA, the INS verification should be accepted. If the INS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, benefits shall be denied and the applicant notified pursuant to Section 10100 of the Code of his or her rights to appeal the denial of benefits.

(l) Provided that the alien has completed and signed Form 205 under penalty of perjury and presented documents issued by the INS which serve as reasonable evidence of the applicant's declared status, eligibility for the benefit, shall not be delayed, denied, reduced or terminated while the status of the alien is verified.

(m) Pursuant to Section 434 of the PRWORA (8 U.S.C. § 1644), where the Department reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's declared status, after an opportunity to do so, said alien should be reported to the INS.

(n) (1) If an applicant for the timely renewal of a benefit has submitted, in good faith, evidence of eligibility pursuant to this section which he had reason to believe would qualify him for renewal of a benefit, but the Department finds that the evidence submitted may not qualify, the Department may, nonetheless, extend the

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

benefit for 90 days in order to allow the applicant to submit additional evidence of eligibility, which satisfies the requirements of this section.

(2) Upon written request, which establishes good cause, from an applicant who has received an extension pursuant to subparagraph (l)(1), and upon proof that the applicant has complied with the continuing education requirements of Article 2.5 of Chapter 3 of the Code, the Department may, grant an additional extension not to exceed 60 days in order to allow the applicant to submit additional evidence of eligibility, which satisfies the requirements of this section.

(3) When the benefit is issued during or at the end of the extension provided for in this section it shall expire four years from the date otherwise applicable as if no extension had been granted.

(o) Any denial of a benefit pursuant to this Section shall be subject to Section 10100 of the Code.

(p) This Section does not apply to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

### Article 4. Brokers

#### **2720. Minimum Age.**

A real estate broker license shall not be issued to a person who has not attained the age of 18 years.

#### **2724. Minimum Requirements for Supervision Under Section 10131.01.**

A broker may delegate the responsibility and authority to supervise and control the activities of nonlicensed persons acting under Section 10131.01:

(a) To a real estate broker acting in the capacity of a salesperson to the employing broker and who has entered into a written agreement relating thereto with the employing broker.

(b) To a real estate salesperson licensed to the broker if the salesperson has accumulated at least two years full-time experience as a salesperson licensee during the immediately preceding five-year period and has entered into a written agreement with the broker with respect to the delegation of responsibility.

#### **2725. Broker Supervision.**

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

(a) Transactions requiring a real estate license.

(b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.

(c) Filing, storage and maintenance of such documents.

(d) The handling of trust funds.

(e) Advertising of any service for which a license is required.

(f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.

(g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

#### **2726. Broker-Salesman Relationship Agreements.**

Every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **2728. Partners Operating from Branch Offices.**

A real estate broker who is a member of a partnership operating as a real estate brokerage business under written agreement may conduct business from a branch office of the partnership without acquiring a branch office license in his own name if another broker member of the partnership has a current branch office license at the location in question.

### **2728.5. Broker/Salesman Operating from Branch Office.**

A real estate broker acting in the capacity of a salesman to another broker under written agreement may perform acts for which a license is required on behalf of the employing broker at any place of business at which the employing broker is currently licensed to perform acts for which a real estate license is required.

### **2729. Record Retention – Optical Image Storage.**

(a) A real estate broker may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, trust records and other documents executed by him or her or obtained by him or her in connection with any transaction for which a real estate broker license is required, provided the following requirements are satisfied:

- (1) The electronic image storage shall be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record.
- (2) The stored document or record is made or preserved as part of and in the regular course of business.
- (3) The original record from which the stored document or record was copied was made or prepared by the broker or the broker's employees at or near the time of the act, condition or event reflected in the record.
- (4) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage.
- (5) The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.
- (6) Records copied and stored under this section shall be retained for three years pursuant to Section 10148 of the Code.

(b) A broker will maintain at the broker's office a means of viewing copies of documents or records stored pursuant to this section. A broker shall provide, at the broker's expense, a paper copy of any document or record requested by the Department.

### **2729.5. Record Retention – Uniform Electronic Transactions Act.**

(a) A real estate broker who obtains documents in connection with any transaction for which a real estate broker license is required when such documents contain an electronic signature pursuant to the Uniform Electronic Transactions Act (Section 1633.1 et seq. of the Civil Code) or the Electronic Signatures in Global and National Commerce Act shall retain a copy of such documents, including the electronic signatures. The broker shall retain a copy of such documents by: 1) Causing a paper copy of the document to be made or 2) By using electronic image storage media pursuant to Section 2729. The broker may retain copies of such documents at a location other than the broker's place of business.

(b) A broker shall maintain at the broker's office a means of viewing copies of documents or records stored pursuant to this section. After notice, such documents or records shall be made available for examination, inspection, and copying by the Commissioner or his or her designated representative during regular business hours. The broker shall provide, at the broker's expense, a paper copy of any document or record requested by the Department.

(c) Nothing in this section shall be construed to permit a broker to avoid compliance with Section 10148 of the Code.

## **Article 5. Licenses Under Fictitious Names**

### **2731. Use of False or Fictitious Name.**

(a) A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(b) The Department shall issue a license required under the Real Estate Law only in the legal name of the licensee or in the fictitious business name of a broker who presents evidence of having complied with the provisions of Sections 17910 and 17917 of the Code.

(c) The commissioner may refuse to issue a license bearing a fictitious name to a broker if the fictitious name:

- (1) Is misleading or would constitute false advertising.
- (2) Implies a partnership or corporation when a partnership or corporation does not exist in fact.
- (3) Includes the name of a real estate salesperson.
- (4) Constitutes a violation of the provisions of Sections 17910, 17910.5, 17915 or 17917 of the Code.
- (5) Is the name formerly used by a licensee whose license has since been revoked.

### Article 6. Corporate Licenses

#### **2740. Broker Officers.**

No acts for which a real estate license is required may be performed for, or in the name of, a corporation when there is no officer of the corporation licensed under Section 10158 or 10211.

#### **2742. Certificate of Status, Qualification or Good Standing.**

(a) An applicant for an original broker license for a domestic corporation shall submit with the application, a Certificate of Status (Domestic Corporation) executed by the California Secretary of State not earlier than 30 days before the date of mailing or delivering the application to the headquarters office of the Department.

However, if the applicant is a domestic corporation which filed its original Articles of Incorporation not earlier than six (6) months before the date of mailing or delivering the application to the headquarters office of the Department, Articles of Incorporation executed by the California Secretary of State may be submitted instead of a Certificate of Status.

(b) An applicant for an original broker license for a foreign corporation shall submit with the application, a Certificate of Qualification or a Certificate of Good Standing (Foreign Corporation) executed by the California Secretary of State not earlier than 30 days before the date of mailing or delivering the application to the headquarters office of the Department.

(c) A corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State.

#### **2743. Assignment of Supervisory Responsibility.**

(a) A resolution assigning supervisory responsibility over salespersons licensed to a corporate broker is in compliance with Section 10159.2 of the Code if the assignment is made by reference to a specified business address or addresses of the corporate broker rather than by the listing of the names of salespersons subject to the supervision of the broker officer.

(b) In filing the resolution with the Department, the following information shall be furnished on a form prescribed by the Department:

- (1) Name, business address and license number of the corporate broker.
- (2) Name of the individual broker licensee who was responsible for supervision of the salespersons in question immediately preceding the effective date of the resolution.

#### **2746. Corporate Real Estate Brokers, Officers, Directors and Shareholders.**

(a) At the time of application for, or in the reinstatement of, an original real estate broker license, the designated officer shall file a background statement of information for each director, the chief executive officer, the president, first level vice presidents, secretary, chief financial officer, subordinate officers with responsibility for forming policy of the corporation and all natural persons owning or controlling more than ten percent of its shares, if such person has been the subject of any of the following:

- (1) Received an order or judgment issued by a court or governmental agency during the preceding 10 years temporarily or permanently restraining or enjoining any business conduct, practice or employment;
- (2) Has had a license to engage in or practice real estate or other regulated profession, occupation or vocation denied, suspended or revoked during the preceding 10 years;

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(3) Engaged in acts requiring a real estate license of any state without the benefit of a valid license or permit authorizing that conduct during the preceding 10 years which have been enjoined by a court of law or administrative tribunal;

(4) Been convicted of a crime which is substantially related to the qualifications, functions or duties of a licensee of the Department as specified in Section 2910 of these Regulations (excluding drunk driving, reckless driving and speeding violations).

(b) The background statement shall be set forth in DRE Form 212 and shall inquire only about the information to be disclosed pursuant to subdivision (a). The background statement must be verified and completed by each corporate officer, director or stockholder as named in subdivision (a) to the fullest extent of the signatory's actual knowledge.

(c) Whenever there is a change in the persons whose background statements are required to be on file with the Department for a corporate licensee pursuant to subdivision (a) or an addition to the persons required to file statements pursuant to subdivision (a), the designated officer of the corporation shall, within 30 days thereafter, file with the Department a background statement of information for each new or changed person.

### Article 7. Salesmen

#### **2750. Minimum Age.**

A real estate salesman license shall not be issued to a person who has not attained the age of 18 years.

#### **2752. Notice of Change of Broker.**

Whenever a real estate salesperson enters the employ of a real estate broker, the broker shall notify the commissioner of that fact within five days. This notification shall be given on a form prepared by the Department and shall be signed by the broker and the salesperson. The form of notification shall provide for the furnishing of at least the following information:

(1) Name and business address of the broker.

(2) Mailing address of the salesperson, if different from the business address.

(3) Date when the salesperson entered the employ of the broker.

(4) Certification by the salesperson that he has complied with the provisions of Section 10161.8(d) of the Business and Professions Code.

(5) Name and business address of the real estate broker to whom the salesperson was last licensed and the date of termination of that relationship.

(6) Certification by the salesperson that the predecessor broker has notice of the termination of the relationship.

As an acceptable alternative to (5) and (6) above, the form may be utilized by the predecessor broker to give notice of the termination of the broker/salesperson relationship as required by Section 10161.8(b) of the Business and Professions Code if this notice is mailed to the commissioner not more than ten days following such termination.

#### **2753. Retention of Salesperson's License Certificate.**

The license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed. Upon the termination of employment of the salesperson, the broker shall return the license certificate to the salesperson within three business days following the termination.

#### **2755. Salesperson Working for Partnership.**

A salesperson who is licensed to a broker who is a member of a partnership acting pursuant to Section 10137.1 of the Code may perform acts for which a real estate license is required for and on behalf of the partnership.

### Article 8. Examinations

#### **2761. Application for Examination.**

A person desiring to take an examination for a license issued by the department shall apply to take the examination on a form furnished by the department. This form and the examination papers may require that the

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

applicant set forth such information as is necessary to identify the applicant from among other examinees and for the purpose of correlating the application form and examination paper of each examinee.

### **2761.5. Persons Not Eligible for Examination.**

An examination shall not ordinarily be administered to a person who has a license or the right to the issuance of a license of the class for which the examination is to be given.

### **2763. Examination Rules.**

(a) A person taking an examination for a license issued by the Department shall abide by all of the following rules from the time of entry into the examination room until the examinee has completed the examination and left the examination room:

- (1) An examinee may not refer to any printed or written material other than that furnished by the Department.
- (2) Written computations by examinees shall be made only on paper furnished by the Department for that purpose.
- (3) An examinee may not communicate with another examinee nor with any person other than an examination proctor.
- (4) The copying of questions and the making of any notes of examination materials by an examinee is prohibited.
- (5) An examinee may not leave the examination room prior to completion of the examination unless express permission of an examination proctor has been obtained and all examination papers and materials have been turned over to the proctor.
- (6) The only materials or devices, other than those furnished by the Department, that an examinee may use during the course of the examination are pencils and slide rules or silent, battery-operated, electronic, pocket-size calculators which do not have a print-out capability, or an alphabetic keyboard.
- (7) An examinee may not share the use of examination materials with any other examinee.

(b) A violation of any of the above rules or verbal directives of an examination proctor is ground to disqualify an examinee and to initiate appropriate administrative action to deny the issuance of a license to the examinee.

## **Article 9. Advertising**

### **2770. Electronic Communication – Advertising and Dissemination of Information on the Internet.**

(a) The following definitions shall apply for the purposes of this section:

- (1) “Customer” means the person located within the State of California on whose behalf a service is provided or offered or to whom an advertisement is directed.
- (2) “Services” means any activity for which a real estate license is required and which is offered or provided to a customer located within this state.

(b) Persons who advertise or disseminate information about services over the Internet, the World Wide Web, or similar electronic common carrier systems, will not be deemed to be engaged in the business, act in the capacity of, advertise or assume to act as a real estate broker within this state if any of the following apply:

- (1) The advertisement or information involves a service but (A) is not directed to any particular person or customer located within the State of California, (B) is limited to general information about the services offered to customers or the public in general, and (C) includes the legend “The services referred to herein are not available to persons located within the State of California.”
- (2) The advertisement or information does not involve a service provided in connection with activity for which a real estate license is required.
- (3) The advertisement or information is not being published, circulated or transmitted on behalf of another or others.

(c) A person who advertises or disseminates information with respect to providing a service is not required to have a real estate broker license if any of the following conditions apply:

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (1) The person publishing, circulating or transmitting the advertisement or disseminating the information is acting within the exemptions from the definition of real estate broker contained in Sections 10133 or 10133.1 of the Code;
- (2) The services provided do not include any of the acts within the meaning of Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, 10131.45 and 10131.6 of the Code.
- (3) (A) Prior to any direct electronic communication or any response or contact with a specific customer there is in place, barriers or other implemented policies and procedures, designed to ensure that prior to the response or contact, the person making it is appropriately licensed under the Real Estate Law or qualifies for an exemption from real estate broker licensure; and,  
  
(B) There is a legend in all advertising and information disseminated about services offered indicating whether the person making the advertising or disseminating the information is a licensed California real estate broker. If the person is not a licensed California real estate broker, an additional legend shall be included which provides as follows: "The services are not available to persons located within the State of California."

### **2770.1. Advertising – License Designation.**

Use of the terms broker, agent, Realtor, loan correspondent or the abbreviations bro., agt., or other similar terms or abbreviations, is deemed sufficient identification to fulfill the designation requirements of Section 10140.6 of the Business and Professions Code.

Use of the terms and abbreviations set forth above do not satisfy the requirements of Sections 10235.5 and 17539.4 of the Code.

## **Article 10. Discrimination and Panic Selling**

### **2780. Discriminatory Conduct as the Basis for Disciplinary Action.**

Prohibited discriminatory conduct by a real estate licensee based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin includes, but is not limited to, the following:

- (a) Refusing to negotiate for the sale, rental or financing of the purchase of real property or otherwise making unavailable or denying real property to any person because of such person's race, color, sex, religion, ancestry, physical handicap, marital status or national origin.
- (b) Refusing or failing to show, rent, sell or finance the purchase of real property to any person or refusing or failing to provide or volunteer information to any person about real property, or channeling or steering any person away from real property, because of that person's race, color, sex, religion, ancestry, physical handicap, marital status or national origin or because of the racial, religious, or ethnic composition of any occupants of the area in which the real property is located.

It shall not constitute discrimination under this subdivision for a real estate licensee to refuse or fail to show, rent, sell or finance the purchase of real property to any person having a physical handicap because of the presence of hazardous conditions or architectural barriers to the physically handicapped which conform to applicable state or local building codes and regulations.

- (c) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in the sale or purchase or negotiation or solicitation of the sale or purchase or the collection of payment or the performance of services in connection with contracts for the sale of real property or in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

- (d) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in the terms, conditions or privileges of sale, rental or financing of the purchase of real property.

This subdivision does not prohibit the sale price, rent or terms of a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

- (e) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in providing services or facilities in connection with the sale, rental or financing of the

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

purchase of real property, including but not limited to: processing applications differently, referring prospects to other licensees because of the prospects' race, color, sex, religion, ancestry, physical handicap, marital status or national origin, using with discriminatory intent or effect, codes or other means of identifying minority prospects, or assigning real estate licensees on the basis of a prospective client's race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

(f) Representing to any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin that real property is not available for inspection, sale or rental when such real property is in fact available.

(g) Processing an application more slowly or otherwise acting to delay, hinder or avoid the sale, rental or financing of the purchase of real property on account of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of a potential owner or occupant.

(h) Making any effort to encourage discrimination against persons because of their race, color, sex, religion, ancestry, physical handicap, marital status or national origin in the showing, sale, lease or financing of the purchase of real property.

(i) Refusing or failing to cooperate with or refusing or failing to assist another real estate licensee in negotiating the sale, rental or financing of the purchase of real property because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of any prospective purchaser or tenant.

(j) Making any effort to obstruct, retard or discourage the purchase, lease or financing of the purchase of real property by persons whose race, color, sex, religion, ancestry, physical handicap, marital status or national origin differs from that of the majority of persons presently residing in a structural improvement to real property or in an area in which the real property is located.

(k) Performing any acts, making any notation, asking any questions or making or circulating any written or oral statement which when taken in context, expresses or implies a limitation, preference or discrimination based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin; provided, however, that nothing herein shall limit the administering of forms or the making of a notation required by a federal, state or local agency for data collection or civil rights enforcement purposes; or in the case of a physically handicapped person, making notation, asking questions or circulating any written or oral statement in order to serve the needs of such a person.

(l) Making any effort to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by a federal or state law, including but not limited to: assisting in any effort to coerce any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin to move from, or to not move into, a particular area; punishing or penalizing real estate licensees for their refusal to discriminate in the sale or rental of housing because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of a prospective purchaser or lessee; or evicting or taking other retaliatory action against any person for having filed a fair housing complaint or for having undertaken other lawful efforts to promote fair housing.

(m) Soliciting of sales, rentals or listings of real estate from any person, but not from another person within the same area because of differences in the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of such persons.

(n) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin in informing persons of the existence of waiting lists or other procedures with respect to the future availability of real property for purchase or lease.

(o) Making any effort to discourage or prevent the rental, sale or financing of the purchase of real property because of the presence or absence of occupants of a particular race, color, sex, religion, ancestry, physical handicap, marital status or national origin, or on the basis of the future presence or absence of a particular race, color, sex, religion, ancestry, physical handicap, marital status or national origin, whether actual, alleged or implied.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(p) Making any effort to discourage or prevent any person from renting, purchasing or financing the purchase of real property through any representations of actual or alleged community opposition based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(q) Providing information or advice to any person concerning the desirability of particular real property or a particular residential area(s) which is different from information or advice given to any other person with respect to the same property or area because of differences in the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of such persons.

This subdivision does not limit the giving of information or advice to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(r) Refusing to accept a rental or sales listing or application for financing of the purchase of real property because of the owner's race, color, sex, religion, ancestry, physical handicap, marital status or national origin or because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of any of the occupants in the area in which the real property is located.

(s) Entering into an agreement, or carrying out any instructions of another, explicit or understood, not to show, lease, sell or finance the purchase of real property because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(t) Making, printing or publishing, or causing to be made, printed or published, any notice, statement or advertisement concerning the sale, rental or financing of the purchase of real property that indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin, or any intention to make such preference, limitation or discrimination.

This subdivision does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(u) Using any words, phrases, sentences, descriptions or visual aids in any notice, statement or advertisement describing real property or the area in which real property is located which indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

This subdivision does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(v) Selectively using, placing or designing any notice, statement or advertisement having to do with the sale, rental or financing of the purchase of real property in such a manner as to cause or increase discrimination by restricting or enhancing the exposure or appeal to persons of a particular race, color, sex, ancestry, physical handicap, marital status or national origin.

This subdivision does not limit in any way the use of an affirmative marketing program designed to attract persons of a particular race, color, sex, religion, ancestry, physical handicap, marital status or national origin who would not otherwise be attracted to the real property or to the area.

(w) Quoting or charging a price, rent or cleaning or security deposit for a particular real property to any person which is different from the price, rent or security deposit quoted or charged to any other person because of differences in the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of such persons.

This subdivision does not prohibit the quoting or charging of a price, rent or cleaning or security deposit for a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

(x) Discriminating against any person because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin in performing any acts in connection with the making of any determination of financial ability or in the processing of any application for the financing or refinancing of real property.

Nothing herein shall limit the administering of forms or the making of a notation required by a federal, state or local agency for data collection or civil rights enforcement purposes. In any evaluation or determination as to whether, and under what terms and conditions, a particular lender or lenders would be likely to grant a loan,

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

licensees shall proceed as though the lender or lenders are in compliance with Sections 35800 through 35833 of the California Health and Safety Code (The Housing Financial Discrimination Act of 1977).

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

(y) Advising a person of the price or value of real property on the basis of factors related to the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of residents of an area or of residents or potential residents of the area in which the property is located.

(z) Discriminating in the treatment of, or services provided to, occupants of any real property in the course of providing management services for the real property because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of said occupants.

This subdivision does not prohibit differing treatment or services to a physically handicapped person because of the physical handicap in the course of providing management services for a housing accommodation.

(aa) Discriminating against the owners or occupants of real property because of the race, color, sex, religion, ancestry, physical, handicap, marital status or national origin of their guests, visitors or invitees.

(bb) Making any effort to instruct or encourage, expressly or impliedly, by either words or acts, licensees or their employees or other agents to engage in any discriminatory act in violation of a federal or state fair housing law.

(cc) Establishing or implementing rules that have the effect of limiting the opportunity for any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin to secure real property through a multiple listing or other real estate service.

(dd) Assisting or aiding in any way, any person in the sale, rental or financing of the purchase of real property where there are reasonable grounds to believe that such person intends to discriminate because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

### **2781. Panic Selling as the Basis for Disciplinary Action.**

Prohibited discriminatory conduct includes, but is not limited to, soliciting sales or rental listings, making written or oral statements creating fear or alarm, transmitting written or oral warnings or threats, or acting in any other manner so as to induce or attempt to induce the sale or lease of real property through any representation, express or implied, regarding the present or prospective entry of one or more persons of another race, color, sex, religion, ancestry, marital status or national origin into an area or neighborhood.

## **Article 12. Subdivisions**

### **2790. Application For Public Report.**

An application for a public report whether it includes a completed questionnaire or consists only of a notice of intention shall be made on a form prescribed by the Department and shall be submitted to the Department with the applicable filing fee. The application shall be executed by or on behalf of the person to whom the public report is to be issued. If executed within California, the information in the application and the documents submitted therewith shall be certified to be true under penalty of perjury or verified before a notary public or other person qualified to administer oaths. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed, or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.

#### **2790.1. Filing Fees.**

(a) All subdivision filing fees for an application for a public report shall be the following:

(1) A notice of intention without a completed questionnaire: One hundred fifty dollars (\$150).

(2) An original public report for subdivision interests described in Section 11004.5: One thousand six hundred fifty dollars (\$1,650) plus ten dollars (\$10) for each subdivision interest to be offered.

(3) An original public report for subdivision interests other than those described in Section 11004.5: Five hundred fifty dollars (\$550) plus ten dollars (\$10) for each subdivision interest to be offered.

(4) A conditional public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500).



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(5) A conditional public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).

(6) A preliminary public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500).

(7) A preliminary public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).

(8) A renewal public report for subdivision interests described in Section 11004.5: Five hundred fifty dollars (\$550).

(9) A renewal public report for subdivision interests other than those described in Section 11004.5: Five hundred fifty dollars (\$550).

(10) An amended public report for subdivision interests described in Section 11004.5: Four hundred dollars (\$400) plus ten dollars (\$10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(11) An amended public report to offer subdivision interests other than those described in Section 11004.5: Four hundred dollars (\$400) plus ten dollars (\$10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(b) The maximum fee under Section 11011(b)(2) and (b)(10) shall be \$7,600 regardless of the number of interests authorized to be offered for sale or lease.

(c) The maximum fee under Section 11011(b)(3) and (b)(11) shall be \$4,100 regardless of the number of interests authorized to be offered for sale or lease.

(d) The filing fee for an amended public report where the amendment consists only of a recurring and non-substantive change including, but not limited to a change in the name of the subdivider shall be \$125 and the filing fee for each additional amended public report consisting only of the same recurring and non-substantive change including, but not limited to a change in the name of the subdivider submitted by that subdivider at the same time shall be \$60. This subsection does not apply where there is a change in the ownership of the subdivision along with a change in the name of the subdivider.

### **2790.2. Conditional Public Reports**

(a) An applicant for an original, renewed or amended Final Public Report for a subdivision of the type not described in Section 11000.1 of the Code may also apply for a Conditional Public Report for the subdivision.

(b) An applicant for a Conditional Public Report shall submit the following information and documents with the applicable filing fee:

(1) A copy of the statement set forth in Section 11018.12(f) which the applicant proposes to use.

(2) An exemplar sales agreement or lease to be used in any transaction conducted under authority of the Conditional Public Report. Such sales agreement or lease shall include the following provisions:

(A) As a condition of the sale or lease that no escrow will close, funds will not be released from escrow and the interest contracted for will not be conveyed until a current Final Public Report for the subdivision is furnished to the purchaser.

(B) The return of the entire sum of money paid or advanced by the purchaser if a Final Public Report for the subdivision has not been issued within six months of the date of issuance of the Conditional Public Report or the purchaser or lessee is dissatisfied with the Final Public Report because of a change pursuant to Section 11012.

(3) An exemplar of escrow instructions to be used in any transaction conducted under authority of the Conditional Public Report which includes at least the following:

(A) The name and address of the escrow depository.

(B) A description of the nature of the transaction.

(C) Provisions ensuring compliance with Section 11013.2(a) or 11013.4(a) of the Code.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(D) Provisions ensuring that no escrow will close, funds will not be released from escrow and the interest contracted for will not be conveyed until a current Final Public Report for the subdivision is furnished to the purchaser or lessee.

(E) Provisions for the return of money as prescribed in subsection (2)(B) above.

(4) For a subdivision described in Section 11004.5 of the Code, in addition to the requirements set forth above:

(A) Information and documents demonstrating that reasonable arrangements have been made to assure completion of the subdivision and all offsite improvements included in the offering.

(B) Information and documents demonstrating that the applicant has complied with Section 11018.5(a)(2) of the Code for the subdivision.

(c) A Conditional Public Report will not be issued unless the applicant has met the requirements set forth in Section 11018.12 of the Code.

(d) Written notice of the decision to deny issuance of a Conditional Public Report will be mailed to the applicant, pursuant to Section 11018.12(c) of the Code, within five business days after the Commissioner decides not to issue a Conditional Public Report.

(e) The term of a Conditional Public Report will not exceed six months, but the Conditional Public Report may be renewed for one additional six-month period if the Commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

(f) The Commissioner may issue a conditional permit for a subdivision as defined in Section 10250.1 in accordance with the provisions of subsections (a) through (e), above.

### **2790.4. Questionnaire Waiver – Rural Housing Service.**

The submission of a completed questionnaire shall be waived pursuant to subdivision (c) of Section 11010 of the Code for a proposed subdivision offering that satisfies all of the following criteria:

(a) Except as provided in (d) below, the division of the land is not a subdivision as defined in Sections 11000.1 or 11004.5 of the Code.

(b) The financing of the purchase or lease of lots and parcels will be provided exclusively by the Rural Housing Service pursuant to Section 502 of the Housing Act of 1949 (42 U.S.C. Section 1472) as amended.

(c) Lots and parcels will be developed and improved with residential structures exclusively through technical assistance grants to nonprofit agencies pursuant to Section 523 of the Housing Act of 1949 (42 U.S.C. Section 1490(c)) as amended.

(d) If the proposed offering is a planned development subdivision within the meaning of subdivision (a) of Section 11004.5 of the Code, the submission of a completed questionnaire shall be waived if the applicant, pursuant to subdivision (b)(14) of Section 11010 of the Code, submits the following for the subdivision:

(1) Governing instruments for the subdivision and the association of owners.

(2) Detailed budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.

(3) Evidence that common areas and facilities have been or will be conveyed free of liens and encumbrances, to the association of owners or to the owners as tenants in common.

### **2790.5. Phased Senior Citizen Housing Developments.**

(a) An applicant for a public report may qualify a proposed project as a senior citizen housing development, even though there are an insufficient number of dwelling units in the initial phase of the project to satisfy the statutory definition of the term as set forth in Section 51.3 of the Civil Code, by complying with the provisions of Section 11010.05 of the Code.

(b) The submission of documentation of the following items shall be deemed to have satisfied the requirements of subdivision (c) of Section 11010.05 of the Code.

(1) A preliminary title report or policy of title insurance showing that the applicant holds fee title, a long-term leasehold interest, or other evidence of controlling interest in the property to be annexed to the first phase,

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

and any subsequent phase, of the subdivision, such as an irrevocable option, as being vested in the applicant.

(2) A covenant, recorded in the office of the appropriate county recorder, limiting use on the land proposed to be annexed to a senior citizen housing development.

(3) A certification from the appropriate local authority that the land proposed to be annexed is sufficient in size to construct the number of additional units necessary to qualify the project as a senior citizen housing development as that term is defined in Section 51.3(c)(3) of the Civil Code.

### **2790.6. Separate Review of Declarations**

The filing fee to review a declaration as described in Section 11010.10 of the Code shall be the maximum fee set forth in Section 11011 of the Code.

### **2791. Purchase Money Disbursements.**

(a) The Contract proposed to be used by an applicant for a public report (Subdivider) for the sale or lease of subdivision interests shall provide that if the escrow for sale or lease of a subdivision interest does not close on or before the date set forth in the contract, or a later closing date mutually agreed to by subdivider and the prospective buyer or lessee (Buyer), within 15 days after the closing date set forth in the contract or an extended closing date mutually agreed to by Subdivider and Buyer, Subdivider shall, except as provided in subdivision (c), order all of the money remitted by Buyer under the terms of the Contract for acquisition of the subdivision interest (Purchase Money) to be refunded to Buyer.

(b) The Contract may provide for disbursements or charges to be made against Purchase Money for payments to third parties for credit reports, escrow services, preliminary title reports, appraisals and loan processing services by such parties provided that the Contract includes:

(1) Specific enumeration of all of the disbursements or charges that may be made against Purchase Money, and

(2) The Subdivider's estimate of the total amount of such disbursements and charges.

(c) (1) Any contractual provision which calls for a disbursement or a charge against Purchase Money based upon Buyer's alleged failure to complete the purchase of the subdivision interest must conform with Civil Code Sections 1675 (including either subsection (c) or subsection (d) thereof), 1676, 1677 and 1678.

(2) Except for a disbursement made following substantial compliance with the procedures set forth in paragraph (4) below or pursuant to a written agreement of the parties which either cancels the Contract or is executed after the final closing date specified by the parties, a disbursement or charge against Purchase Money as liquidated damages may be done only pursuant to a determination by a court of law, or by an arbitrator if the parties have so provided by contract, that Subdivider is entitled to a disbursement or charge against Purchase Money as liquidated damages.

(3) A contractual provision for a determination by arbitration that Subdivider is entitled to a disbursement or charge against Purchase Money as liquidated damages shall require that the arbitration be conducted in accordance with procedures that are equivalent in substance to the commercial arbitration rules of the American Arbitration Association, that any arbitration include every cause of action that has arisen between Buyer and Subdivider under the Contract, and that the Subdivider remit the fee to initiate arbitration with the costs of the arbitration ultimately to be borne as determined by the arbitrator.

(4) The contract of sale may include a procedure under which Purchase Money may be disbursed by the escrow holder to the Subdivider as liquidated damages upon Buyer's failure to timely give the escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages. This procedure shall contain at least the following elements:

(A) The Subdivider shall give written notice, in the manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action, to escrow holder and to Buyer that Buyer is in default under the Contract and that Subdivider is demanding that escrow holder remit \$\_\_\_\_\_ from the Purchase Money to Subdivider as liquidated damages unless, within 20 days, Buyer gives escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages.

(B) Buyer shall have a period of 20 days from the date of receipt of the Subdivider's 20-day notice and demand in which to give escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(5) The Contract may not make Buyer's failure to timely give the escrow holder the aforesaid written objection a waiver of any cause of action the Buyer may have against the Subdivider under the Contract unless the waiver is conditioned upon service of the Subdivider's 20-day notice and demand in the manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action.

(6) If the Subdivider has had the use of Purchase Money pending consummation of the sale or lease transaction under authorization by the Department pursuant to subdivision (c) or (d) of Section 11013.2 of the Code or subdivision (b) or (c) of Section 11013.4 of the Code, Subdivider shall immediately upon alleging the default of Buyer, transmit to the escrow holder, funds equal to all of the Purchase Money paid by Buyer.

### **2791.1. Purchase Money Impounds.**

(a) The amount of the money paid or advanced by a prospective buyer or lessee toward the purchase or lease of a subdivision interest (Purchase Money) that must be deposited and retained in an escrow depository or trust account pursuant to Section 11013.2(a) or 11013.4(a) of the Code shall ordinarily be the entire amount of the Purchase Money less disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.

(b) For purposes of compliance with Section 11013.2(a) of the Code:

(1) A proper release has not been obtained from a deed of trust encumbering subdivision lots or parcels unless an instrument has been duly recorded unconditionally reconveying and releasing the lot or lots being sold or leased from the lien or charge of such deed of trust.

(2) As an alternative to obtaining a proper release from the lien or charge of such deed of trust, it shall be deemed acceptable by the commissioner, pursuant to the provisions of Section 11013.2(d) of the Code, if:

(A) the holder of the deed of trust has duly executed an agreement or demand ("release agreement") wherein the holder has agreed, notwithstanding any provision to the contrary in the deed of trust, to promptly perform any act reasonably necessary to record an instrument unconditionally reconveying and releasing the subdivision lots or parcels being sold from the lien or charge of the deed of trust upon payment to the holder of an amount or amounts specified in the release agreement as the release price for the affected subdivision lots or parcels, and the holder has further agreed that specific performance of the terms and provisions of the release agreement shall be compelled in favor of the purchaser or lessee of the lot or lots;

(B) the release agreement has been deposited with the escrow holder for the transaction(s);

(C) the subdivider has notified each purchaser or lessee that the release agreement is available upon request from the escrow holder; and

(D) each purchaser or lessee has been provided a policy of title insurance insuring the purchaser or lessee against loss by reason of the deed of trust.

### **2791.2. Bond Alternative to Purchase Money Impound.**

The penal sum of a bond or bonds furnished by or on behalf of a subdivider pursuant to Section 11013.2(c) or Section 11013.4(b) or (c) of the Code shall ordinarily be not less than the aggregate amount of the money paid or advanced toward the purchase or lease of subdivision interests for which the subdivider is accountable to prospective purchasers or lessees less the sum of the amount held in escrow depositories or trust accounts pursuant to Section 11013.2(a) or Section 11013.4(a) of the Code and the disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.

### **2791.4. Acceptable Escrow Depositories.**

(a) The following entities which are qualified to do business in the State of California are escrow depositories acceptable to the Commissioner under Section 11013.2 and 11013.4 of the Code: escrow agents licensed by the Corporations Commissioner, banks, trust companies, savings and loan associations, title insurers and underwritten title companies.

(b) In exceptional circumstances the Commissioner may approve an escrow depository other than an entity enumerated in subdivision (a).

### **2791.6. Acceptable Trustees.**

A trust company as defined in Section 107 of the Financial Code which is qualified to do business in California is a trustee acceptable to the Commissioner to hold title to a subdivision under Section 11013.2(b) and other

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

applicable provisions of the Subdivided Lands Law. In exceptional circumstances the Commissioner may approve a trustee other than a trust company as defined in Section 107 of the Financial Code.

### **2791.8. Alternative Dispute Resolution.**

(a) A contractual provision requiring arbitration of a dispute or claim between a homeowner and a subdivider, or a provision in the covenants, conditions and restrictions requiring arbitration of a dispute or claim between a homeowners association and a subdivider, shall provide that the arbitration will be conducted in accordance with the following rules and procedures:

- (1) For the subdivider to advance the fees necessary to initiate the arbitration, with the costs and fees, including ongoing costs and fees to be paid as agreed by the parties and if they can't agree as determined by the arbitrator(s) with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator(s);
- (2) For administration of the arbitration by a neutral and impartial person(s);
- (3) For the appointment of a neutral and impartial individual(s) to serve as arbitrator(s), with the arbitrator(s) to be appointed within a specified period of time, which in no event shall be more than sixty days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of Section 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed therein or in Section 1297.124 of the Code of Civil Procedure.
- (4) For the venue of the arbitration to be in the county where the subdivision is located unless the parties agree to some other location.
- (5) For the prompt and timely commencement of the arbitration in accordance with (i) the rules of the arbitration, or if the rules don't specify a date by which the arbitration must commence, then (ii) a date as agreed to by the parties, and if they cannot agree, (iii) a date determined by the arbitrator(s);
- (6) For the arbitration to be conducted in accordance with rules and procedures which are reasonable and fair to the parties.
- (7) For the prompt and timely conclusion of the arbitration.
- (8) For the arbitrators to be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the arbitration. The parties may authorize the limitation or prohibition of punitive damages.

(b) A contractual provision or a provision in covenants, conditions, and restrictions requiring the arbitration to be conducted in accordance with rules and procedures that are equivalent in substance to the commercial arbitration rules of the American Arbitration Association or the Streamlined or Comprehensive Rules and Regulations of JAMS, shall be deemed in compliance with subdivision (a), provided, the rules and procedures for the arbitration, including the commercial arbitration rules of the American Arbitration Association or the Streamlined or Comprehensive Rules and Regulations of JAMS, contain provisions complying with subparagraphs (1) through (8) of subdivision (a).

(c) A copy of the rules to be applicable to an arbitration subject to subdivision (a) shall be submitted as part of the application for a public report (including those rules and regulations that are equivalent in substance to the commercial arbitration rules of the American Arbitration Association or the Streamlined or Comprehensive Rules and Regulations of JAMS). However, if the arbitration is conducted using the actual commercial arbitration rules of the American Arbitration Association or the Streamlined or Comprehensive Rules and Regulations of JAMS such rules and regulations need not be submitted as part of the application for a public report.

(d) A contractual provision may require reference, pursuant to Sections 638 through 645.1 of the Code of Civil Procedure, of a dispute or claim between a homeowner and a subdivider. A provision in the covenants, conditions and restrictions may require reference, pursuant to Sections 638 through 645.1 of the Code of Civil Procedure, of a dispute or claim between a homeowners association and a subdivider.

### **2791.9. Use of Real Property Sales Contracts.**

If a subdivider proposes to sell subdivision interests using real property sales contracts (hereafter sales contracts) as defined in Section 10029 of the Code, a plan under which the subdivider conveys the subdivision interests in trust and records the conveyance prior to the execution of a sales contract by a prospective purchaser (hereafter vendee) and which includes all of the following elements shall be an acceptable alternative method under Section 11013.2(d) and Section 11013.4(f) of the Code:

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (a) The original trustee and any successor trustee are expressly subject to the approval of the commissioner.
- (b) An express prohibition against any amendment of the trust instrument directly or indirectly affecting the interests of a vendee without the prior written approval of the commissioner.
- (c) An agreement by the trustee to continue in that capacity until a successor trustee acceptable to the commissioner has assumed the position.
- (d) Vendees are expressly designated in the trust instrument as beneficiaries.
- (e) If the subdivision interests in the trust are not subject to a blanket encumbrance, provisions for the vendee to make payments under the contract (hereafter purchase money) to the trustee and for the trustee to make disbursements from purchase money as follows:
  - (1) Debt service, taxes, assessments, insurance premiums and any other periodic payments related to the ownership and use of the subdivision interest that the vendee is obligated to make under terms of the sales contract.
  - (2) Payment to the subdivider from the balance of purchase money remaining after the trustee has paid or set aside funds to make payments under (1) above.
- (f) If a subdivision interest is subject to a blanket encumbrance as defined in Section 11013 of the Code:
  - (1) Unless there has been an independent determination that the vendee is in default under the terms of the sales contract, all of the purchase money of a vendee will be held by the trustee in an interest-bearing account for the benefit of the vendee until the subdivision interest that the vendee has contracted to purchase is released from the blanket encumbrance.
  - (2) Unless there has been an independent determination that the vendee is in default under the terms of the sales contract, the refund on demand by the vendee of the entire sum of purchase money paid if the subdivision interest has not been released from the blanket encumbrance within a specified period of time determined by the commissioner to be reasonable in the circumstances.
  - (3) If the subdivider proposes a disbursement of purchase money to himself or for his account based upon vendee's default under the sales contract, a procedure for a determination of default by a court of law or arbitrator and for the disbursement by the trustee of funds as liquidated damages on the basis of the determination that the vendee has defaulted.

### **2792. Substantially Complete Application – Standard Subdivision.**

An application for a final subdivision public report is "substantially complete" within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

- (a) For a subdivision (standard subdivision) of a type not listed or referred to in Section 11000.1 or 11004.5 of the Code:
  - (1) Subdivision filing fee including fee for a preliminary public report if applicable.
  - (2) Completed subdivision questionnaire.
  - (3) Approved tentative subdivision map unless the Commissioner has made a finding that because of processing delays, a tentative subdivision map has not been approved but will be approved within a reasonable amount of time.
  - (4) Certificate of qualification from Secretary of State if applicant is a foreign corporation.
  - (5) Consent to service of process upon Secretary of State if applicant is a nonresident of California.
  - (6) Current preliminary title report covering all subdivision interests for which a public report is sought including:
    - (A) Legal description of the subdivided property.
    - (B) Nature of the interest or estate covered by the report.
    - (C) Record owner of the interest or estate covered by the report.
    - (D) All easements, liens, rights, interest and claims disclosed by an examination of the indices in the office of the recorder of the county in which the property is located.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (E) Existence of any encroachment of improvements over lines of record title.
- (F) All mechanics liens arising out of work completed or in progress.
- (G) Existence of assessments or potential assessments for public improvements completed or under construction.
- (7) Proposed or existing covenants, conditions and restrictions for the subdivision.
- (8) Coastal Commission permit or exemption if subdivision in coastal zone.
- (9) Evidence of availability of domestic utilities and services to the subdivision.
- (10) Information concerning hazards and other unusual conditions within or in the vicinity of the subdivision.
- (11) Assessment and improvement bond information if applicable to the subdivision interests to be offered.
- (12) Exemplars of all marketing, financing and conveyancing instruments to be used in the offering of subdivision interests.
- (13) Exemplar of escrow instructions including at least the following:
  - (A) A description of the nature of the transaction.
  - (B) Provision for the return to nondefaulting buyers of funds deposited toward the purchase of subdivision interests if escrows are not closed on or before a date prescribed in the instructions.
  - (C) Name and address of the escrow depository to be used.
- (14) Bond or other device to be used as a means of compliance with Sections 11013.2 and 11013.4 of the Code.
- (15) Completed documents for reservations and reservation deposits if preliminary public report is requested.
- (16) Evidence of financial arrangements to assure completion of all offsite improvements included in the offering.
- (17) Evidence of financial arrangements for any guarantee or warranty included in the offering.
- (18) Evidence of all arrangements to assure completion, maintenance and availability for any use of privately-owned facility that will be offered as an inducement to the purchase of subdivision interests.

### **2792.1. Substantially Complete Application – Condominium, Planned Development, Community Apartment Project and Undivided Interest Subdivisions.**

An application for a final subdivision public report is “substantially complete” within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

- (a) For a condominium project, community apartment project or planned development:
  - (1) All of the applicable documents and information listed under subdivision (a) of Section 2792.
  - (2) Proposed or existing governing instruments for the owners’ association.
  - (3) Condominium plan if the subdivision is a condominium.
  - (4) Plot plan delineating all improvements including recreational amenities if the subdivision is not a condominium.
  - (5) Overall subdivision plan if the subdivision is part of a phased development.
  - (6) Evidence of financial arrangements for completion of the common areas and facilities in the offering.
  - (7) Copies of all contracts or proposed contracts obligating the owners’ association.
  - (8) Agreement of subdivider to subsidize common area maintenance and owners’ association operation where applicable.
  - (9) Financial arrangements to assure performance of the subsidization agreement where applicable.
  - (10) Detailed pro forma budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (11) Most recent balance sheet and annual operating statement for the owners' association if applicable.
- (12) Duplicate budget package for departmental analysis of proposed budget for common area maintenance and owners' association operations.
- (13) Subdivision trust agreement if applicable.
- (14) Exemplar of deed for conveyance of common area to owners' association.
- (15) Exemplar of escrow instructions including at least the following:
  - (A) A description of the nature of the transaction.
  - (B) Provision for the return to Buyers of funds deposited toward the purchase of subdivision interests if escrows are not closed on or before a date prescribed in the instructions.
  - (C) Name and address of the escrow depository to be used.
  - (D) Provision to assure compliance with subdivision (c) of Section 11018.5 of the Code if applicable.
  - (E) Provision for conveyance of common area to owners' association if applicable.
- (16) A completed supplemental questionnaire if the project is a conversion of an existing structure to a condominium or community apartment project.
- (17) A permit issued by the Department of Corporations if applicable to the offering.

(b) For an undivided interest subdivision:

- (1) All of the applicable documents and information listed in subdivision (a) above.
- (2) A proposed schedule of undivided interests in the subdivision sufficient to identify the undivided interest acquired by each purchaser.
- (3) Statement from the appropriate authority of the county in which the real property is located setting forth the proposed method to be used in assessing and collecting real property taxes for the subdivision.

**2792.2. Substantially Complete Application – Stock Cooperative and Limited Equity Housing Cooperative.**

An application for a final subdivision public report is "substantially complete" within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

(a) For a stock cooperative subdivision:

- (1) Subdivision filing fee including fee for preliminary public report if applicable.
- (2) Completed subdivision questionnaire.
- (3) Approved tentative subdivision map if applicable.
- (4) Plot plan delineating apartments within the subdivision.
- (5) Certificate of qualification from Secretary of State if applicant is a foreign corporation.
- (6) Consent to service of process upon Secretary of State if applicant is a nonresident of California.
- (7) Current preliminary title report covering all subdivision interests for which a public report is sought including:
  - (A) Legal description of the subdivided property.
  - (B) Nature of the interest or estate covered by the report.
  - (C) Record owner of the interest or estate covered by the report.
  - (D) All easements, liens, rights, interests and claims disclosed by an examination of the indices in the office of the recorder of the county in which the property is located.
  - (E) Existence of any encroachment of improvements over lines of record title.
  - (F) All mechanics liens arising out of work completed or in progress.
  - (G) Existence of assessments or potential assessments for public improvements completed or under construction.



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (8) Proposed or recorded covenants, conditions and restrictions for the subdivision, if applicable.
- (9) Coastal Commission permit or exemption if subdivision is in coastal zone.
- (10) Evidence of availability of domestic utilities and services to the subdivision.
- (11) Information concerning hazards and other unusual conditions within or in the vicinity of the subdivision.
- (12) Assessment and improvement bond information if applicable to the subdivision interests to be offered.
- (13) Exemplars of all marketing, financing and conveyancing instruments to be used in the offering of subdivision interests.
- (14) Exemplar of escrow instructions for conveyance of the subdivision to the cooperative corporation.
- (15) Exemplar of escrow instructions for issuance of memberships and exclusive occupancy rights to purchasers including at least the following:
  - (A) A description of the nature of the transaction.
  - (B) Provision for the return to Buyers of funds deposited toward the purchase of memberships if escrows are not closed on or before a date prescribed in the instructions.
  - (C) Name and address of the escrow depository to be used.
  - (D) Provision to assure compliance with subdivision (c) of Section 11018.5 of the Code if applicable.
- (16) Bond or other device to be used as a means of compliance with Sections 11013.2 and 11013.4 of the Code.
- (17) Narrative explanation of plan for financing sales of memberships in cooperative corporation.
- (18) Subordination agreement or other instrument to assure compliance with subdivision (c) of Section 11018.5 of the Code.
- (19) Completed documents for reservations and reservation deposits if a preliminary public report is requested.
- (20) Evidence of financial arrangements to assure completion or proposed renovation of offsite improvements included in the offering.
- (21) Evidence of financial arrangements for completion or renovation of common areas of the subdivision.
- (22) Evidence of financial arrangements for any guarantee or warranty included in the offering.
- (23) Proposed articles of incorporation for cooperative corporation.
- (24) Proposed bylaws for cooperative corporation.
- (25) Proposed proprietary lease (exclusive occupancy) agreement and proposed lease assignment instrument if applicable.
- (26) Copies of all contracts or proposed contracts obligating the cooperative corporation.
- (27) Proposed preclosing rental agreements if applicable.
- (28) Completed supplemental questionnaire if the subdivision is a conversion of an existing structure to a subdivision.
- (29) Detailed pro forma budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.
- (30) Most recent balance sheet and annual operating statement for the cooperative corporation if applicable.
- (31) Agreement of subdivider to subsidize common-area maintenance and cooperative corporation operations if applicable.
- (32) Duplicate budget package for departmental analysis of proposed budget for common area maintenance and owners association operations.
- (33) Proposed schedule for allocation of assessments for property taxes and corporate debt service (if applicable) to members of the corporation.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(34) Exemplar of deed for conveyance of subdivision to cooperative corporation.

(35) Exemplar of membership certificate or stock certificate to be issued by cooperative corporation.

(36) A permit issued by the Department of Corporations if applicable to the offering.

(b) For a limited equity housing cooperative:

(1) All of the applicable documents and information listed in subdivision (a) above.

(2) Information concerning the selling prices and methods for determination of transfer value referred to in Section 33007.5 of the Health and Safety Code.

### 2792.3. Approved Form of Bond for Completion of Common Facilities.

A bond posted pursuant to Section 11018.5(a)(2)(A) to secure the faithful performance of a commitment by the subdivider to complete common facilities and common-area improvements shall be in substantially the following form:

#### COMPANY NAME

Bond No. \_\_\_\_\_

Premium: \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_ (Name of subdivider), as PRINCIPAL, and \_\_\_\_\_ (Name of surety), a corporation organized under the law of the State of \_\_\_\_\_, and authorized to transact the business of surety in the State of California, as SURETY, are firmly held and bound unto \_\_\_\_\_ (Name of homeowner association) (hereinafter referred to as OBLIGEE) in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for which sum, well and truly to be paid, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is given pursuant to Section 11018.5(a)(2)(A) of the California Business and Professions Code to assure lien-free completion of the improvements described in PRINCIPAL's "Planned Construction Statement," a copy of which is attached hereto and incorporated herein by reference, for the subdivision development known as \_\_\_\_\_ (Name of subdivision), situated in the County of \_\_\_\_\_, State of \_\_\_\_\_.

SURETY, for value received, hereby agrees that the matters set forth in California Civil Code Section 3225, or similar acts or omissions which might release the SURETY pursuant to law, shall not in any way release SURETY from the obligation of this bond or reduce SURETY's obligation thereunder.

SURETY, for value received, does hereby waive the right granted to SURETY under California Civil Code Section 2845 to require that OBLIGEE proceed independently against PRINCIPAL to enforce this obligation, but reserves to itself any right under said Section 2845 to require that OBLIGEE proceed jointly against PRINCIPAL and SURETY in any such action.

The condition of this obligation is such that if PRINCIPAL shall complete or cause to be completed said improvements free of liens and claims on or before the latest completion date specified in said "Planned Construction Statement," or an extension thereof given in writing by OBLIGEE to PRINCIPAL and assented to in writing by SURETY, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

A suit or action on this bond must be filed within two years after the latest completion date set forth in the "Planned Construction Statement" or any extension thereof given in writing by OBLIGEE to PRINCIPAL and assented to in writing by SURETY.

The terms, conditions and coverage of this bond have been approved by the Real Estate Commissioner of the State of California.

IN WITNESS WHEREOF, PRINCIPAL and SURETY have caused these presents to be duly signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_

By \_\_\_\_\_

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **2792.4. Special Provision for Enforcement of Bonded Obligations.**

When common-area improvements which are included in the subdivision offering have not been completed prior to the issuance of the public report and the subdivision owners' association (hereafter Association) is obligee under a bond or other arrangement (hereafter Bond) to secure performance of the commitment of the subdivider to complete the improvements, the covenants, conditions and restrictions for the subdivision shall include at least the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of the subdivider and the surety under the Bond:

- (1) The governing body of the Association shall be directed to consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any common-area improvement, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.
- (2) A special meeting of members for the purpose of voting to override a decision by the governing body not to initiate action to enforce the obligations under the Bond or on the failure of the governing body to consider and vote on the question. The meeting shall be required to be held not less than 35 days nor more than 45 days after receipt by the governing body of a petition for such a meeting signed by members representing 5% or more of the total voting power of the Association.
- (3) A vote by members of the Association other than the subdivider at the special meeting called for the purpose set forth in (2) above.
- (4) A vote of a majority of the voting power of the Association residing in members other than the subdivider to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the governing body shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

### **2792.8. Governing Instruments for Common Interest Subdivisions.**

(a) Governing instruments for the ownership and management of subdivisions enumerated in Section 11004.5 of the Code (common-interest subdivisions) including the Covenants, Conditions and Restrictions (CC&R's), Articles of Incorporation (Articles) and Bylaws shall ordinarily provide for, but need not be limited to, the following:

- (1) Creation of an organization (hereafter Association) of subdivision interest owners;
- (2) A description of the common interests of the subdivision owners or lessees;
- (3) Transfer of title and/or control of common interests or of mutual and reciprocal rights of use to the owners in common or the Association;
- (4) Procedures for calculating and collecting regular assessments from owners to defray expenses attributable to the ownership, operation or furnishing of common interests or to the enjoyment of mutual and reciprocal rights of use;
- (5) Procedures for establishing and collecting special assessments for capital improvements or for other purposes;
- (6) Liens upon privately-owned subdivision interests for assessments levied pursuant to the CC&R's and foreclosure thereof for nonpayment;
- (7) Policies and Procedures relating to the disciplining of members for failure to comply with provisions of the governing instruments;
- (8) Creation of a governing body for the Association;
- (9) Procedures for the election and removal of governing body members and officers of the Association;
- (10) Enumeration of the powers and duties of the governing body and the officers and of the limitations upon the authority of the governing body to act without the prior approval of members representing a majority of the voting power of the Association;
- (11) Allocation of voting rights to Association members;

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (12) Preparation of the budgets and financial statements of the Association and for distribution to the Association members;
- (13) Regular and special meetings of Association members with notice requirements;
- (14) Regular meetings of the governing body with provision for notice to Association members;
- (15) Quorum requirements for meetings of members of the Association and of the governing body;
- (16) Procedures for proxy voting at members' meetings;
- (17) Policies and procedures governing the inspection of books and records of the Association by members;
- (18) Amendment procedures for those provisions of the governing instruments which relate to the ownership, management and control of the Association and/or the common interests;
- (19) Prohibitions against or restrictions upon the severability of a separately-owned portion from the common interest portion of a subdivision interest;
- (20) Conditions upon which a partition of a condominium project may be had pursuant to Section 1359 of the Civil Code;
- (21) Action to be taken and procedures to be followed in the event of condemnation, destruction or extensive damage to the subdivision interests, including provisions respecting the use and disposition of insurance proceeds or damages payable to the Association or to a trustee on behalf of owners on account of condemnation, destruction or damage;
- (22) Annexation of additional land to the existing development where appropriate;
- (23) Architectural and/or design control;
- (24) Special provisions for enforcement of financial arrangements by the subdivider to secure performance of his commitment to complete common-area improvements;
- (25) Granting of easements or use rights affecting the common areas;
- (26) Special provisions authorizing the governing body, subject to compliance with Section 1354 of the Civil Code, to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (A) enforcement of the governing instruments, (B) damage to the common areas, (C) damage to the separate interests which the Association is obligated to maintain or repair, or (D) damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.

(b) The Commissioner will ordinarily consider provisions of the governing instruments proposed for a common-interest subdivision to constitute "reasonable arrangements" under Section 11018.5 of the Code if the provisions are in substantial conformance to the applicable standards prescribed in Sections 2792.4, 2792.15 through 2792.21, 2792.23, 2792.24 and 2792.26 through 2792.28 of these Regulations and if they do not otherwise arbitrarily deny, limit or abridge the right of owners with respect to management, maintenance, preservation, operation or control of their subdivision interests.

### **2792.9. Assuring Operating and Maintenance Fund for Common Facilities and Services.**

(a) To assure the availability of funds, or sources of funds, to defray the costs of common facilities and services during the early stages of ownership and operation by the Association and to assure the fulfillment of the subdivider's obligation to pay assessments as an owner of subdivision interests, the Commissioner will ordinarily require that:

- (1) No sale of a subdivision interest be closed until 80% of all subdivision interests covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan) and are simultaneously closed; or
- (2) The subdivider furnish funds, a surety bond to the Association as obligee, or other security convertible to cash by the escrow depository to assure the fulfillment of the subdivider's obligations as an owner of separate interests covered by the final subdivision public report to pay regular and special assessments; or
- (3) The subdivider present an alternative arrangement satisfactory to the Commissioner to secure the fulfillment of the subdivider's obligations to the Association as an owner of separate interests covered by the final subdivision public report.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(b) The security referred to in (a)(2) or (a)(3) above shall ordinarily:

(1) Be in an amount which is equal to six (6) months' regular assessments for the separate interests covered by the final subdivision public report.

(2) Be subject to terms and conditions which will assure that the subdivider pays, as and when due, all regular and special assessments which are levied by the Association against separate interests owned by the subdivider in the subdivision until title to 80% of the separate interests which are covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan).

(3) Be the subject of a contract signed on behalf of the subdivider and the Association covering release and enforcement of the security.

(4) Be delivered to a neutral escrow depository acceptable to the Commissioner along with instructions to the depository signed on behalf of the subdivider and the Association covering handling of the security, return of the security to the subdivider, and remittance of the security to the Association, including the following:

(A) The escrow instructions shall include a procedure under which the security shall be returned to the subdivider upon the Association's failure to give the escrow depository within 40 days the Association's written objection to return of the security. The return of the security shall be made but only if the subdivider's demand for return of the security is accompanied by the subdivider's written statement that the subdivider has paid, as and when due, all regular and special assessments which have been levied by the Association against separate interests which are covered by the final subdivision public report owned by the subdivider. Before the security shall be returned, the subdivider shall certify that title to 80% of the separate interests which are covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan)-

(B) The escrow instructions shall include a procedure under which all or some specified portion of the security shall be remitted to the Association upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security, but only if the Association's demand for remittance of all or some specified portion of the security is accompanied by a written statement signed by an officer of the Association that the subdivider is delinquent in the payment of regular or special assessments which have been levied by the Association against separate interests covered by the final subdivision public report owned by the subdivider.

(C) The escrow instructions shall provide that, in the event the escrow depository receives conflicting instructions from the subdivider and the Association, the escrow holder is authorized, in its sole discretion, to (1) interplead the security or (2) retain the security until the security is disposed of in accordance with (i) the joint or mutual instructions of the subdivider and the Association, (ii) the order of a court of competent jurisdiction or (iii) in accordance with the final binding decision rendered in an alternative dispute resolution proceeding.

(D) If the security is a letter of credit, the escrow instructions shall include a procedure under which the escrow depository shall draw upon the letter of credit prior to the expiration of the time for drawing thereupon, or upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security to the Association.

### **2792.10. Subsidization by Subdivider.**

(a) When the subdivider undertakes to provide goods and/or services to the Association or to pay a portion of a purchaser's share of the Association's financial obligations, the subdivider shall:

(1) Enter into a contract with the Association acceptable in form and content to the Commissioner which shall specify in detail the obligations which the subdivider will undertake to fulfill and, if applicable, the methods to be employed in valuing the goods and services furnished under the program, and cover the release and enforcement of the security referred to in (a) (4), below.

(2) Furnish the Association with an executed copy of the contract, the security referred to in (a) (4), below, and the escrow instructions referred to in (c), below, within ten days after the closing of the first sale (or lease) of subdivision interests.

(3) Submit a monthly accounting to the Association and if the subsidy is other than cash, it shall also contain a description and valuation of the goods and services for the common areas furnished directly by the subdivider or contracted and paid for by him.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(4) Furnish a bond to the Association as obligee or other device to secure the subdivider's undertaking to the Association and the owners under the program. The bond or other device shall be in an amount and subject to terms and conditions which will assure prompt and faithful performance of the contract. The penal sum of a bond shall not ordinarily be reduced by reason of the fact that the subdivider has posted a bond or other security device pursuant to Section 2792.9 of these regulations.

(b) The Commissioner will not ordinarily approve any program in which the subdivider undertakes to provide goods and/or services to the Association or promises to pay a portion of a purchaser's share of the Association's financial obligations unless it provides for the accumulation by the Association of reserves for replacement and major maintenance in accordance with accepted property management practices.

(c) The security device referred to in (a) (4) above shall be delivered to a neutral escrow depository acceptable to the Commissioner along with an executed copy of the contract and instructions to the depository signed by the subdivider and the Association covering handling of the security, return of the security to the subdivider, and remittance of the security to the Association, including the following:

(1) The escrow instructions shall include a procedure under which the security shall be returned to the subdivider upon the Association's failure to give the escrow depository within 40 days the Association's written objection to return of the security, but only if the subdivider's demand for return of the security is accompanied by the subdivider's written statement that the subdivider has faithfully performed all of the subdivider's obligations under the contract.

(2) The escrow instructions shall include a procedure under which all or some specified portion of the security shall be paid to the Association upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to payment of the security, but only if the Association's demand for payment of the security is accompanied by the Association's written statement that the subdivider has failed to perform the subdivider's obligations under the contract.

(3) The escrow instructions shall provide that, in the event the escrow holder receives conflicting instructions from the subdivider and the Association, the escrow holder is authorized, in its sole discretion, to (1) interplead the security or (2) retain the security until the security is disposed of in accordance with (i) the joint or mutual instructions of the subdivider and the Association, (ii) the order of a court of competent jurisdiction or (iii) in accordance with the final binding decision rendered in an alternative dispute resolution proceeding.

(4) If the security is a letter of credit, the escrow instructions shall include a procedure under which the escrow depository shall draw upon the letter of credit prior to the expiration of the time for drawing thereupon, or upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security to the Association.

### **2792.13. Undivided Interests Subdivisions – Impound of Funds.**

All funds received from prospective buyers to be applied to the purchase of undivided subdivision interests, including community apartment projects, stock cooperatives and limited equity housing cooperatives, shall be deposited and held intact in an escrow depository acceptable to the Real Estate Commissioner until bona fide offers have been obtained for the purchase of a prescribed percentage of all of the interests being offered for sale.

In the event that the prescribed percentage of offers have not been obtained within two years from the date of the issuance of the public report, or such other period as the Commissioner may approve, all funds theretofore collected shall be promptly returned by the escrow depository to owners without deduction.

The prescribed percentage shall be determined by the Commissioner based upon the facts and circumstances of each such offering. Ordinarily this percentage shall be not less than 60% of the interests being offered for sale provided, however, that the Commissioner may prescribe a lesser percentage if the plan of the offering includes other financial arrangements to lessen the possibility of foreclosure of a nondelinquent interest on account of the delinquencies of other owners.

### **2792.14. Undivided Interests Subdivisions—Blanket Encumbrances.**

(a) Except as provided in subdivision (b) hereof, if the real property to be owned by the stock cooperative corporation will be subject to a mortgage or deed of trust affecting the interest of more than one member or shareholder of the stock cooperative (hereafter blanket encumbrance), a public report will not be issued unless legal or financial arrangements satisfactory to the Real Estate Commissioner have been made to:

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(1) Provide assurance that the ownership and possessory rights of a member of the stock cooperative will not be adversely affected by foreclosure or acceleration of the blanket encumbrance by or on behalf of the beneficiary unless the affected member or shareholder is delinquent in payments allocated by the stock cooperative to debt service on the blanket encumbrance.

(2) Provide assurance for the payment of said blanket encumbrance.

(b) The provisions of subdivision (a) shall not apply in the case of a stock cooperative which is (1) insured under Section 213 or Section 221 of the National Housing Act, as amended and involves a regulatory agreement between stock cooperative and the Secretary of Housing and Urban Development with the provision for the establishment and maintenance of a general operating reserve or (2) assisted under Section 8 of the U. S. Housing Act of 1937 as amended and involves a housing assistance payment contract between the stock cooperative and the Secretary of Housing and Urban Development with a special provision for the establishment and maintenance of a general operating reserve as the Secretary of Housing and Urban Development may approve.

### **2792.15. Reasonable Arrangements – Transfer of Common Areas and Facilities to Association.**

(a) In subdivisions in which all or a portion of the common areas and facilities are to be transferred to the Association, those areas and facilities shall be transferred to the Association or to a corporate trustee under a trust agreement acceptable to the Commissioner prior to or coincident with the first transfer or conveyance of a subdivision interest by the subdivider.

(b) The subdivider may create a contractual right in himself or may reserve easements of limited duration, for common driveway purposes, for drainage and encroachment purposes and for ingress to and egress from the common areas for the purpose of completing improvements thereon or for the performance of necessary repair work and, in the case of phased subdivision projects, for entry onto adjacent property in connection with the development of additional phases of the overall project.

### **2792.16. Reasonable Arrangements – Assessments and Liens.**

(a) Regular assessments to defray expenses attributable to the ownership, operation and furnishing of common interests by the Association shall ordinarily be levied against each owner according to the ratio of the number of subdivision interests owned by the owner assessed to the total number of interests subject to assessments.

(b) In the case of a subdivision offering in which it is reasonable to anticipate that any owner will derive as much as 10% more than any other owner in the value of common services supplied by the Association, the assessment against each owner may be determined according to a formula or schedule under which the assessments against the various subdivision interests bear a relationship which is equitably proportionate to the value of the common services furnished to the respective interests.

(c) The subdivider—and his successor in interest, if any—is an owner subject to the payment of regular and special assessments against subdivision interests which he owns provided, however, that the subdivider and any other owner of a subdivision interest which does not include a structural improvement for human occupancy may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. The exemption may include, but shall not necessarily be limited to:

- Roof replacement;
- Exterior maintenance;
- Walkway and carport lighting;
- Refuse disposal;
- Cable television; and
- Domestic water supplied to living units.

(1) Any exemption from the payment of assessments attributed to dwelling units shall be in effect only until the earliest of the following events.

(A) A notice of completion of the structural improvements has been recorded.

(B) Occupation or use of the dwelling unit.

(C) Completion of all elements of the residential structures which the Association is obliged to maintain.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(2) The subdivider and any other owner of a subdivision interest may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. Any exemption from the payment of assessments attributed to common facilities shall be in effect only until the earliest of the following events.

(A) A notice of completion of the common facility has been recorded.

(B) The common facility has been placed into use.

(d) The governing body of the Association must comply with the provisions of Section 1366 of the Civil Code prior to any increase in assessments.

(e) The governing body of the Association may not levy special assessments without complying with the provisions of Section 1366 of the Civil Code.

(f) (1) Regular assessments against the subdivision interests in a phase of a multi-phase subdivision or against all subdivision interests in a single-phase subdivision shall commence on the date of the first conveyance of a subdivision interest in that phase under authority of a public report or on the first day of the month following the first conveyance of a subdivision interest in the phase.

(2) Except in those subdivision offerings where there is an approved subsidization plan which otherwise provides, voting rights attributable to subdivision interests shall not vest until assessments against those interests have been levied by the Association.

(g) (1) A lien for regular or special assessments against an owner may be made subordinate by the CC&R's to the lien of any first mortgage or first deed of trust (hereafter collectively first encumbrance) against subdivision interests of the owner.

(2) In the case of a subordination of a lien for assessments to a first encumbrance, the transfer of a subdivision interest as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first encumbrance shall extinguish the lien of assessments which were due and payable prior to the transfer of the subdivision interest.

(3) No transfer of the subdivision interest as the result of a foreclosure or exercise of a power of sale shall relieve the new owner, whether it be the former beneficiary of the first encumbrance or another person, from liability for any assessments thereafter becoming due or from the lien thereof.

(h) (1) For the purposes of subdivision (d) and subdivision (e), a quorum means more than 50% of the members of the Association.

(2) Any meeting or election of the Association for purposes of complying with subdivision (d) and subdivision (e) shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(i) Notwithstanding any other provision contained in this section, the governing body may increase assessments necessary for emergency situations pursuant to Section 1366 of the Civil Code.

(j) The governing body shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in Section 1365.5 of the Civil Code.

### **2792.17. Reasonable Arrangements – Members' Meetings.**

(a) Regular meetings of members of the Association shall be held not less frequently than once each calendar year at a time and place prescribed by the Bylaws. The first meeting of the Association, whether a regular or special meeting, shall be held within 45 days after the closing of the sale of the subdivision interest which represents the 51st percentile interest authorized for sale under the first public report for the subdivision, provided that public report authorizes the sale of 50 subdivision interests or more in the subdivision. However, in no event shall the meeting be held later than six months after the closing of the sale of the first subdivision interest without regard to the number of subdivision interests authorized for sale in the first public report.

(b) Meetings of Association members shall be conducted in accordance with the provisions of Section 1363 of the Civil Code.

(c) A special meeting of the members of the Association shall be promptly scheduled by the governing body in response to:



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(1) The vote of the governing body itself.

(2) Written request for a special meeting signed by members representing at least 5% of the total voting power of the Association.

(d) Written notice of regular and special meetings shall be given to members by the governing body by any means which is appropriate given the physical setup of the subdivision. This notice shall be given not less than 10 nor more than 90 days before the date of any meeting at which members are required or permitted to take any action. The notice shall specify the place, day and hour of the meeting and the matters the governing body intends to present for action by the members. Except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(e) (1) Except as provided in Sections 2792.16(d) and (e)(1), a quorum for the transaction of business at a meeting of members of the Association through presence in person or by proxy shall be established at a percentage of not less than 25% and not more than 66 2/3% of the total voting power of the Association. Within these percentage limits, the quorum requirements for members' meetings shall be suited to such factors as the proposed physical layout of the subdivision, the contemplated number of owners of subdivision interests and the nature and extent of the common areas, facilities and services.

(2) In the absence of a quorum at a members' meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five days and not more than 30 days from the original meeting date. The quorum for an adjourned meeting may be set by the governing instruments at a percentage less than that prescribed for the regular meeting, but it shall not be less than 25 percent of the total voting power of the Association. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

(f) Any action which may be taken by the vote of members at a regular or special meeting, except the election of governing body members where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the Corporations Code.

(g) Any form of proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the governing body be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

### **2792.18. Reasonable Arrangements – Members' Voting Rights.**

(a) With the exception of those Associations which have two classes of voting membership, a member of an Association, including an Association which provides for unequal assessments against the subdivision interests, shall be entitled to one vote for each subdivision interest owned. If a subdivision interest is owned by more than one person, each such person shall be a member of the Association, but there shall be no more than one vote for each subdivision interest.

(b) An Association may have two classes of voting membership according to the following provisions:

(1) Each owner of a subdivision interest other than a subdivider is a Class A member. Class A membership entitles the holder to one vote for each subdivision interest owned.

(2) The subdivider is a Class B member. Class B membership entitles the holder to not more than three votes for each subdivision interest owned.

(3) In a single-phase subdivision development, Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(A) The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member.

(B) A prescribed date which is not later than the second anniversary of the first conveyance of a subdivision interest in the development.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(4) In a multi-phase development for which the subdivider has submitted a plan for phased development through annexation which satisfies the requirements of Section 2792.27, the Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(A) A prescribed date certain which is not later than the second anniversary of the first conveyance of a subdivision interest in the most recent phase of the development.

(B) A prescribed date which is not later than the fourth anniversary of the first conveyance of a subdivision interest in the first phase of the development.

(c) With the exception of Section 2792.4, no regulation which requires the approval of a prescribed majority of the voting power of members of the Association other than the subdivider for action to be taken by the Association is intended to preclude the subdivider from casting votes attributable to subdivision interests which he or she owns. Governing instruments may specify either or both of the following for approval of action for which a regulation of the Department—other than Section 2792.4—requires the approval of a prescribed majority of the voting power of members of the Association other than the subdivider:

(1) In those Associations in which Class A and Class B voting memberships have been prescribed in accordance with this regulation, the vote or written assent of a bare majority of the Class B voting power as well as the vote or written assent of a prescribed majority of the Class A voting power.

(2) In those Associations in which a single class of voting membership exists, either as originally established or after the conversion of Class B to Class A shares, the vote or written assent of a bare majority of the total voting power of the Association as well as the vote or written assent of a prescribed majority of the total voting power of members other than the subdivider.

### **2792.19. Reasonable Arrangements – Election of Governing Body.**

(a) The first election of a governing body for the Association shall be conducted at the first meeting of the Association. All positions on the governing body shall be filled at that election.

(b) (1) Voting for the governing body shall be by secret written ballot. Cumulative voting in the election of governing body members shall be prescribed for all elections in which more than two positions on the governing body are to be filled subject only to the procedural prerequisites to cumulative voting prescribed in Section 7615(b) of the Corporations Code.

(2) Unless the entire governing body is removed from office by the vote of members of the Association, no individual governing body member shall be removed prior to the expiration of his term of office if the votes cast against removal would be sufficient to elect the governing body member if voted cumulatively at an election at which the same total number of votes were cast and the entire number of governing body members authorized at the time of the most recent election of the governing body member were then being elected.

(c) (1) A special procedure shall be established by the governing instruments to assure that from the first election of the governing body and thereafter for so long as a majority of the voting power of the Association resides in the subdivider, or so long as there are two outstanding classes of membership in the Association, not less than 20% of the incumbents on the governing body shall have been elected solely by the votes of owners other than the subdivider.

(2) A governing body member who has been elected to office solely by the votes of members of the Association other than the subdivider may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in members other than the subdivider.

### **2792.20. Reasonable Arrangements – Governing Body Meetings.**

(a) Regular meetings of the governing body of the Association shall be held as prescribed in the Bylaws. Ordinarily such meetings shall be conducted at least monthly though the Bylaws may prescribe meetings as infrequently as every six months if business to be transacted by the governing body does not justify more frequent meetings.

(b) (1) Regular meetings of the governing body shall be held at a time and at a meeting place fixed by the governing body from time to time. The meeting place shall ordinarily be within the subdivision itself unless in the judgment of the governing body a larger meeting room is required than exists within the subdivision in which case the meeting room selected shall be as close as possible to the subdivision.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(2) Notice of the time and place of a regular meeting shall be posted at a prominent place or places within the common area and shall be communicated to governing body members not less than four days prior to the meeting unless the time and place of meeting is fixed by the Bylaws provided however that notice of a meeting need not be given to any governing body member who has signed a waiver of notice or a written consent to holding of the meeting. If the common area consists only of an easement or is otherwise unsuitable for posting of such notice, the governing body shall communicate the notice of the time and place of such meeting by any means it deems appropriate.

(c) (1) A special meeting of the governing body may be called by written notice signed by the President of the Association or by any two members of the governing body other than the President.

(2) The Notice shall specify the time and place of the meeting and the nature of any special business to be considered.

(3) Notice shall be posted or communicated in a manner prescribed for notice of regular meetings and shall be sent to all governing body members not less than 72 hours prior to the scheduled time of the meeting provided however that notice of the meeting need not be given to any governing body member who signed a waiver of notice or a written consent to holding of the meeting.

(d) Regular and special meetings of the governing body shall be governed by the provisions of Section 1363.05 of the Civil Code.

(e) (1) The governing body may take actions without a meeting if all of its members consent in writing to the action to be taken.

(2) If the governing body resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the common area within three days after the written consents of all governing body members have been obtained. If the common area consists only of an easement or is otherwise unsuitable for posting the explanation of the action taken, the governing body shall communicate said explanation by any means it deems appropriate.

### **2792.21. Reasonable Arrangements – Governing Body Powers and Limitations.**

(a) The powers and duties of the governing body of the Association shall normally include, but shall not be limited to, the following:

(1) Enforcement of applicable provisions of the Covenants, Conditions and Restrictions, Articles, Bylaws and other instruments for the ownership, management and control of the subdivision.

(2) Payment of taxes and assessments which are, or could become, a lien on the common area or a portion thereof.

(3) Contracting for casualty, liability and other insurance on behalf of the Association.

(4) Contracting for goods and/or services for the common areas, facilities and interests or for the Association subject to the limitations set forth below.

(5) Delegation of its powers to committees, officers or employees of the Association as expressly authorized by the governing instruments.

(6) Preparation of budgets and financial statements for the Association as prescribed in the governing instruments.

(7) Formulation of rules of operation of the common areas and facilities owned or controlled by the Association.

(8) Initiation and execution of disciplinary proceedings against members of the Association for violations of provisions of the governing instruments in accordance with procedures set forth in the governing instruments.

(9) Entering upon any privately-owned subdivision interest as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the owners in common.

(10) Election of officers of the governing body.

(11) Filling of vacancies on the governing body except for a vacancy created by the removal of a governing body member.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(b) The governing body of the Association shall ordinarily be prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the members, other than the subdivider, constituting a quorum consisting of more than 50 percent of the voting power of the Association residing in members other than the subdivider:

(1) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or the owners' Association for a term longer than one year with the following exceptions:

(A) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(B) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(C) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured.

(D) Lease agreements for laundry room fixtures and equipment of not to exceed five years duration provided that the lessor under the agreement is not an entity in which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(E) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(F) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(G) A contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

(2) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.

(3) Selling during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year.

(4) Paying compensation to members of the governing body or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the governing body may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(5) In the case of a limited equity housing cooperative, using the corporate equity for any purpose permitted under Section 33007.5(d)(1) of the Health and Safety Code without the vote or written consent of a bare majority of the stock or membership interests of resident owners.

### **2792.23. Reasonable Arrangements – Inspection of Association's Books and Records.**

(a) Commencing not later than 90 days after the close of escrow of the first interest in the subdivision, copies of the documents listed below, as soon as readily obtainable, shall be delivered by the subdivider to the governing body of the Association at the office of the Association, or at such other place as the governing body of the Association shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the subdivider no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision:

(1) The recorded subdivision map or maps for the project.

(2) The recorded condominium plan, if any, and all amendments thereto.

(3) The deeds and easements executed by the subdivider conveying the common area or other interest to the Association, to the extent applicable.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(4) The recorded covenants, conditions and restrictions for the subdivision, including all amendments and annexations thereto.

(5) The Association's filed articles of incorporation, if any, and all amendments thereto.

(6) The Association's bylaws and all amendments thereto.

(7) All architectural guidelines and all other rules regulating the use of an owner's interest in the subdivision or use of the common area which have been promulgated by the Association.

(8) The plans approved by the local agency or county where the subdivision is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.

(9) All notice of completion certificates issued for common area improvements (other than residential structures).

(10) Any bond or other security device in which the Association is the beneficiary.

(11) Any written warranty being transferred to the Association for common area equipment, fixtures or improvements.

(12) Any insurance policy procured for the benefit of the Association, its governing board or the common area.

(13) Any lease or contract to which the Association is a party.

(14) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association.

(15) Any instrument referred to in Section 11018.6(d) but not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of members of the Association.

(b) Commencing not later than 90 days after the annexation of additional phases to the subdivision, copies of those documents listed under subdivision (a) which are applicable to that phase, shall, as soon as readily obtainable, be delivered by the subdivider to the governing body of the Association at the office of the Association, or at such other place as the governing body of the Association shall prescribe. The obligation to deliver the documents listed in subsection (a) shall apply to any documents obtained by the subdivider no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision.

(c) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association shall be made available for inspection and copying by any member of the Association – or by his duly-appointed representative – at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the subdivision as the governing body shall prescribe.

(d) (1) In the case of the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the governing body, other than an executive session, shall be available to members within 30 days of the meeting and shall be distributed to only members upon request and payment of the fee prescribed in (e)(3) below.

(2) At the time the pro forma operating budget is distributed or at the time of any general mailing, members of the Association shall be notified in writing of their right to have copies of the minutes of meetings of the governing body and as to how and where those minutes may be obtained and the cost of obtaining such copies.

(e) The governing body shall establish reasonable rules with respect to:

(1) Notice to be given to the custodian of the records by the member of the Association desiring to make the inspection.

(2) Hours and days of the week when such an inspection may be made.

(3) Payment of the cost of reproducing copies of documents requested by a member of the Association.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(f) Every member of the governing body shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a member of the governing body includes the right to make extracts and copies of documents.

### **2792.24. Reasonable Arrangements – Governing Instruments – Amendments.**

(a) In a single-class voting structure, amendments of the CC&R's may be enacted by requiring the vote or written assent of members representing both:

- (1) A majority of the total voting power of the Association which is at least a bare majority and not more than 75%; and
- (2) At least a bare majority of the votes of members other than the subdivider.

The percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. For example, if the CC&R's expressly state that 75% of the voting power must agree to an increase in the maximum annual assessment, then 75% of the voting power is necessary to amend this provision regardless of the percentage prescribed in the general provision pertaining to amendments of the CC&R's.

(b) Amendments of the Articles or Bylaws shall require the vote or written assent of the members as follows:

- (1) An owners Association other than for a limited equity housing cooperative.

#### (A) Articles

- (i) At least a bare majority of the governing body; and
- (ii) At least a bare majority of the voting power of the Association; and
- (iii) At least a bare majority of the votes of members other than the subdivider.

#### (B) Bylaws

- (i) At least a bare majority of a quorum, but not more than a bare majority of the voting power of the Association; and
- (ii) At least a bare majority of the votes of members other than the subdivider.

- (2) An owners Association for a limited equity housing cooperative.

#### (A) Articles

- (i) At least a bare majority of the governing body; and
- (ii) At least 66 2/3 percent of the resident-owner members or shareholders.

#### (B) Bylaws

- (i) At least 66 2/3 percent of the resident-owner members or shareholders.

(c) Notwithstanding the provisions of (b) above, the percentage of a quorum or of the voting power of the Association or of members other than the subdivider necessary to amend a specific clause or provision in the Articles or Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) If a two-class voting structure is provided and is still in effect in the Association, none of the governing instruments may be amended without the vote or written assent of a prescribed percentage of the voting power of each class of membership or a prescribed percentage of a quorum of members of each class.

(e) If a two-class voting structure was originally provided in the governing instruments, but is no longer in effect because of the conversion of one class to the other, the provisions for amending the governing instruments set forth in subdivisions (a) and (b) above shall be applicable.

### **2792.26. Reasonable Arrangements – Disciplining of Members by the Association.**

(a) The Association cannot be empowered to cause a forfeiture or abridgement of an owner's right to the full use and enjoyment of his individually-owned subdivision interest on account of the failure by the owner to comply with provisions of the governing instruments or of duly-enacted rules of operation for common areas and facilities

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments duly levied by the Association.

(b) The governing instruments shall include provisions which authorize the governing body to impose monetary penalties, temporary suspensions of an owner's rights as a member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the procedures for notice and hearing, satisfying the minimum requirements of Section 7341 of the Corporations Code, are followed with respect to the accused member before a decision to impose discipline is reached.

(c) A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member was allegedly responsible or in bringing the member and his subdivision interest into compliance with the governing instruments may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

(d) The provisions of subdivision (c) do not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

### **2792.27. Reasonable Arrangements – Annexation of Property to the Subdivision.**

(a) Provisions in the CC&Rs to effect the annexation of real property to the existing subdivision shall require the vote or written assent of not less than 66 2/3% of the total votes residing in Association members other than the subdivider unless the proposed annexation is in substantial conformance with a detailed plan of phased development submitted to the commissioner with the application for a public report for the first phase of the subdivision.

(b) The plan for phased development through annexation referred to in subdivision (a) must include, but need not be limited to, the following:

(1) Proof satisfactory to the Commissioner that no proposed annexation will result in an overburdening of common facilities.

(2) Proof satisfactory to the Commissioner that no proposed annexation will cause a substantial increase in assessments against existing owners which was not disclosed in subdivision public reports under which pre-existing owners purchased their interests.

(3) Identification of the land proposed to be annexed and the total number of residential units then contemplated by the subdivider for the overall subdivision development.

(4) A written commitment by the subdivider to pay to the association, concurrently with the closing of the escrow for the first sale of a subdivision interest in an annexed phase, appropriate amounts for reserves for replacement or deferred maintenance of common area improvements in the annexed phase necessitated by or arising out of the use and occupancy of residential units under a rental program conducted by the subdivider which has been in effect for a period of at least one year as of the date of closing of the escrow for the first sale of a residential unit in the annexed phase.

### **2792.28. Reasonable Arrangements – Architectural and Design Control.**

(a) The committee for the control of structural and landscaping architecture and design (Architectural Control Committee) within the subdivision shall consist of not less than three nor more than five members.

(b) The subdivider may appoint all of the original members of the Architectural Control Committee and all replacements until the first anniversary of the issuance of the original public report for the first (or only) phase of the subdivision. The subdivider may reserve to himself the power to appoint a majority of the members of the Committee until 90% of all the subdivision interests in the overall development have been sold or until the fifth anniversary date of the original issuance of the final public report for the first (or only) phase of the subdivision, whichever first occurs.

(c) After one year from the date of issuance of the original public report for the first (or only) phase of the subdivision, the governing body of the Association shall have the power to appoint one member to the Architectural Control Committee until 90% of all of the subdivision interests in the overall development have been sold or until the fifth anniversary date of the original issuance of the final public report for the first (or only) phase

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

of the subdivision, whichever first occurs. Thereafter the governing body of the Association shall have the power to appoint all of the members of the Architectural Control Committee.

### **2792.30. Rescission Rights.**

A person who has made an offer to purchase an interest in an undivided interest subdivision may exercise the right of rescission granted by Section 11000.2 of the Code by giving written notification of the election to rescind to the subdivider at the place of business designated by the subdivider pursuant to Section 2792.31 of these regulations.

If the notice of election is by United States mail, it shall be considered given on the date that it is postmarked. If the notice is sent by telegraph, it shall be considered as given when transmitted by telegraph from the place of origin. If notification is by means of writing sent other than by United States mail or telegraph, it shall be considered as given at the time of delivery at the place of business designated by the subdivider.

### **2792.31. Notice of Rescission Rights.**

(a) To inform a person of his/her right of rescission under Section 11000.2 of the Code, the subdivider shall attach to the face page of every copy of a subdivision public report given to a prospective purchaser, the notice set forth in subdivision (b) hereof printed in not less than 12-point bold face capital letters and numerals.

(b) The form and content of the notice shall be as follows:

**IF YOU MAKE AN OFFER TO PURCHASE AN UNDIVIDED INTEREST(S) IN THE UNDIVIDED INTEREST SUBDIVISION IDENTIFIED BELOW, YOU HAVE A LEGAL RIGHT TO RESCIND (CANCEL) THIS OFFER, AND ANY CONTRACT RESULTING FROM THE ACCEPTANCE OF YOUR OFFER, AND THE RETURN OF ALL MONEY AND OTHER CONSIDERATION THAT YOU HAVE GIVEN TOWARD THE PURCHASE UNTIL MIDNIGHT OF THE THIRD CALENDAR DAY AFTER THE DAY ON WHICH YOU SIGN THE OFFER TO PURCHASE.**

**YOU MAY EXERCISE THIS RIGHT TO RESCIND WITHOUT GIVING ANY REASON AND WITHOUT INCURRING ANY PENALTY OR OBLIGATION BY NOTIFYING**

\_\_\_\_\_  
(Name of Subdivider)

AT \_\_\_\_\_

\_\_\_\_\_  
(Address)

**OF YOUR ELECTION TO RESCIND BY TELEGRAPHIC COMMUNICATION, MAIL OR OTHER WRITTEN NOTICE.**

**IF THE NOTICE OF RESCISSION IS SENT BY UNITED STATES MAIL, IT SHALL BE CONSIDERED GIVEN ON THE DATE THAT IT IS POSTMARKED. IF THE NOTICE IS BY TELEGRAPHIC COMMUNICATION, IT SHALL BE CONSIDERED GIVEN WHEN TRANSMITTED FROM THE PLACE OF ORIGIN. IF NOTIFICATION IS BY MEANS OF A WRITING TRANSMITTED OTHER THAN BY UNITED STATES MAIL OR TELEGRAPH, IT SHALL BE CONSIDERED GIVEN AT THE TIME OF DELIVERY AT THE ABOVE PLACE OF BUSINESS.**

**YOU MAY USE THIS NOTICE FOR THE PURPOSE OF RESCINDING YOUR OFFER TO PURCHASE BY COMPLETING THE BLANKS AND BY DATING AND SIGNING BELOW. THE USE OF REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED IS RECOMMENDED FOR TRANSMITTAL OF THIS NOTICE BY MAIL.**

\_\_\_\_\_  
(Name of Undivided Interest Subdivision)

\_\_\_\_\_  
(DRE File Number)

**I HEREBY RESCIND MY OFFER OF** \_\_\_\_\_  
(Date)



**REGULATIONS OF THE REAL ESTATE COMMISSIONER**

**TO PURCHASE AN UNDIVIDED INTEREST**

\_\_\_\_\_  
(Identification Number, If Known)

**IN THE ABOVE-NAMED UNDIVIDED INTEREST SUBDIVISION.**

\_\_\_\_\_, 19\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

**2792.32. Alternative Arrangements for Master Planned Communities.**

(a) A "Master Planned Development" is a development which ordinarily satisfies all of the following criteria:

- (1) The development is or will be a planned development subdivision within the meaning of subdivision (k) of Section 1351 of the Civil Code.
- (2) The development consists of, will generally consist of, or is proposed to consist of both (a) approximately five hundred (500) or more separate residential interests, and (b) one or more subdivisions, including planned developments, community apartment projects, condominium projects, stock cooperatives, time-share projects, or other residential, recreational, commercial, or mixed residential/non-residential projects.
- (3) The Master Planned Development shall be managed by a community association ("Master Association") that is responsible for the maintenance and operation of areas and/or facilities affecting the Master Planned Development and enforcement of use restrictions pertaining to the Master Planned Development.
- (4) The Master Planned Development is or will be developed in two or more phases.

Provided, however, the subdivider may demonstrate from specific facts and circumstances that a development that does not satisfy the criteria set forth in this subsection (a) should nonetheless be treated as a Master Planned Development.

(b) Recognizing that control by the subdivider over the governing body serving a residential common interest development and over the architectural control committee serving the development is ordinarily necessary until a reasonable portion of the project has been completed, in order to fulfill the expectations of the subdivider and the purchasers, the governing instruments for a Master Association shall substantially conform to the applicable standards prescribed in subsections (c) through (g), inclusive, below.

(c) **SUBDIVIDER'S MEMBERSHIP VOTING RIGHTS:** The governing instruments for a Master Association may include provisions for two classes of membership as defined in Section 2792.18(b). For such a Master Association, Class B membership shall be automatically converted to Class A membership and Class B membership shall thereafter cease to exist on the first to occur of the following:

- (1) When seventy-five percent of the separate residential interests proposed for the overall Master Planned Development have been conveyed to Class A members;
- (2) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or
- (3) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

(d) **DELEGATE VOTING:** The governing instruments for a Master Association may include provisions for establishing a geographical area in the Master Planned Development for one or more delegates to represent the collective voting power of the members residing in such residential or mixed residential/non-residential projects within the Master Planned Development. Arrangements in the governing instruments for the exercise of the voting power of the Master Association by delegates selected by each delegate district shall conform to the following criteria:

## **REGULATIONS OF THE REAL ESTATE COMMISSIONER**

- (1) The governing instruments must establish a procedure for the selection of delegates, for defining delegate districts, and for determining the number of votes that may be cast by a delegate.
- (2) There shall be at least one delegate and one alternate for each delegate district.
- (3) In any meeting of the members of the Master Association, the votes of members residing in a delegate district shall be cast by delegates selected to represent that delegate district.
- (4) The duties of the delegates shall be prescribed in the governing instruments.

(e) **QUORUM FOR MEMBERSHIP MEETINGS:** The quorum for an adjourned meeting of the members of the Master Association, as described in Section 2792.17(e)(2) of these Regulations, may be set by the governing instruments at a percentage less than that prescribed for the regular meeting, but it shall not be less than 15 percent of the total voting power of the Master Association.

(f) **GOVERNING BODY MEMBERSHIP:**

- (1) The governing instruments may include provision for the election of a majority of the governing body of the Master Association by the subdivider under a Class C vote or similar device. For such a Master Association, this arrangement shall irreversibly terminate on the first to occur of the following:

- (A) When seventy-five percent of the separate residential interests proposed for the overall Master Planned Development have been conveyed to Class A members;
- (B) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or
- (C) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

- (2) The governing instruments may include provision for the election of twenty percent of the members of the board of directors of the Master Association by the subdivider until the first to occur of the following:

- (A) When ninety percent of the subdivision interests in the overall development have been conveyed to Class A members;
- (B) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report.
- (C) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

(g) **ARCHITECTURAL CONTROL:** Members appointed to the Architectural Control Committee by the governing body or by the subdivider need not be members of the Master Association. The governing instruments may include provision for the election of a majority of the Architectural Control Committee of the Master Association by the subdivider. This arrangement shall irreversibly terminate on the first to occur of the following:

- (1) When ninety percent of the separate interests proposed for the overall Master Planned Development have been conveyed to Class A members; or
- (2) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report.

(h) **ADDITIONAL ASSOCIATIONS:** If any residential structure or other major special benefit facility or amenity will be constructed or provided within the Master Planned Development and commonly maintained or operated for the use or benefit of some but not all of the homeowners within the Master Planned Development, ordinarily one or more separate homeowners associations shall be established under arrangements substantially satisfying the requirements of Sections 2792.4, 2792.8(a), and 2792.15 to 2792.26, inclusive, of these Regulations to maintain the residential structure or to maintain and operate the major special benefit facility or amenity and to enforce any obligation or commitment, and any bond or other arrangement securing such obligation or commitment, relating to the residential structure or major special benefit facility or amenity.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(i) Notwithstanding the foregoing, the subdivider may present to the Commissioner specific facts and circumstances relating to a Master Planned Development that demonstrate the need for alternative arrangements, satisfactory to the Commissioner, from those provisions set forth in subsections (c) through (h) above.

### **2793. Applications for Consent Under Section 11018.7.**

(a) Application for consent of the Real Estate Commissioner under Section 11018.7 of the Business and Professions Code shall be made on a form provided by the department.

(b) The application shall consist of at least the following:

(1) A statement signed by or on behalf of the applicant containing the following:

(A) A narrative explanation of the proposed change and the anticipated effects thereof.

(B) The reasons why the amendment is being proposed.

(C) The means whereby persons eligible to vote on the proposed change will be informed concerning the substance of the change, and the voting procedure to be employed if the consent of the commissioner is obtained.

(D) Identification of the subdivisions which will be affected by the proposed change by reference to the file numbers of the public reports for the subdivisions.

(2) A copy of the instrument to be amended in its present form.

(3) A copy of the instrument incorporating the changes proposed in the application with suitable marking to indicate proposed amendments.

(4) A copy of the resolution or other authority for submission of the application if made on behalf of a corporation or association.

(5) A copy of the letter or notice to be given to all persons eligible to vote on the proposed change.

(6) An application fee of twenty dollars (\$20.00) in the form of a check or money order.

(c) If the commissioner finds that the proposed change will not materially change the rights of any owner to ownership, possession or use of interests in the subdivision, the commissioner shall consent to the submission of the proposed change to a vote of the owners or members. If the commissioner finds that the proposed change will materially change such rights, the commissioner shall require, as a condition of the commissioner's consent, that a notice approved by the commissioner describing the substance of the proposed change be given to those persons eligible to vote at least fifteen days prior to the vote.

(d) If the commissioner determines that the change as proposed would create a new condition or circumstance that would be the basis for denial of a public report under Section 11018 or 11018.5, the commissioner shall issue a formal order denying consent to the submission of the proposal to persons eligible to vote thereon.

(e) If an applicant fails to take the steps necessary to obtaining the consent of the commissioner within ninety days after the application is filed, the commissioner may deem the application to be abandoned in which case a new application must be filed if the application is to be thereafter pursued.

### **2795. Preliminary Public Report.**

(a) If a subdivider makes application and pays the appropriate fee, a preliminary subdivision public report may be issued by the Department in advance of satisfaction of all requirements for issuance of a final public report when in the judgment of the Commissioner it is reasonable to expect that all of the requirements for the issuance of a final public report will be satisfied in due course.

(b) A subdivider and persons acting on his behalf may solicit and accept reservations to purchase or lease subdivision interests under authority of a preliminary public report if there is compliance with each of the following:

(1) The person making the reservation (potential buyer) has been given a copy of the preliminary public report and has executed a receipt for a copy before any money or other thing of value has been accepted by or on behalf of the subdivider in connection with the reservation.

(2) A copy of the reservation instrument signed by the potential buyer and by or on behalf of the subdivider, along with any deposit taken from the potential buyer, is placed into a neutral escrow depository acceptable to the Commissioner.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(3) The reservation instrument used is a form previously approved by the Department with at least the following provisions:

(A) The right of either subdivider or potential buyer to unilaterally cancel the reservation at any time.

(B) The payment to the potential buyer of his total deposit on cancellation of the reservation by either party.

(C) The placing of the deposit into an interest bearing account for the benefit of the prospective buyer at the prospective buyer's request and upon the prospective buyer's agreement to pay any charges of the escrow depository for this service.

(c) The initial term of a preliminary public report shall not exceed one year from the date of issuance. The authority to use a preliminary public report shall automatically terminate with respect to those subdivision interests covered by a final public report which is issued before the scheduled termination date of the preliminary report.

### **2795.1. Receipt for Final or Preliminary Public Report.**

(a) A receipt on the form specified herein shall be taken by or on behalf of the subdivider from each person executing a reservation agreement under authority of a preliminary public report and each person who has made a written offer to purchase or lease a subdivision interest under authority of a final subdivision public report.

(b) The subdivider or his agent shall retain each receipt for a public report for a period of three years from the date of the receipt and shall make the receipts available for inspection by the Commissioner or his designated representative during regular business hours.

(c) The form approved by the Commissioner for the acknowledgement of receipt of a final or preliminary public report is as follows:

### RECEIPT FOR PUBLIC REPORT

The Law and Regulations of the Real Estate Commissioner require that you as a prospective purchaser or lessee be afforded an opportunity to read the public report for this subdivision before you make any written offer to purchase or lease a subdivision interest or before any money or other consideration toward purchase or lease of a subdivision interest is accepted from you.

In the case of a preliminary subdivision public report, you must be afforded an opportunity to read the report before a written reservation or any deposit in connection therewith is accepted from you.

DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE READ IT.

I have read the commissioner's public report on

\_\_\_\_\_  
(File No.)

\_\_\_\_\_  
(Tract No. or Name)

I understand the report is not a recommendation or endorsement of the subdivision, but is for information only.

The date of the public report which I received and read is:

\_\_\_\_\_  
(Date Issued)

\_\_\_\_\_  
(Date Amended)

Name \_\_\_\_\_

Address \_\_\_\_\_

(Date) \_\_\_\_\_

***Subdivider Is Required to Retain this Receipt for Three Years.***

### **2795.3. Term of Public Report and Extension Thereof.**

The term of any Final Subdivision Public Report issued pursuant to Section 11018 of the Business and Professions Code shall be limited to five (5) years. A renewal shall be issued if the subdivider, owner or agent makes application for renewal of any report and has submitted such additional information as the commissioner may require.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **2798. Phased Subdivision Development.**

If a subdivider, for the purpose of developing and marketing subdivided land in increments or phases, requests and obtains a public report that covers less than all of the contiguous subdivision interests or land which the subdivider intends ultimately to develop as part of an overall project, a new notice of intention, questionnaire and original filing fee must be submitted in connection with each subsequent application for a public report covering subdivision interests to be annexed to the subdivision interests for which a final public report has previously been issued.

### **2799.1. Subdivision Advertising Criteria.**

Standards which will be applied by the Real Estate Commissioner in determining whether advertising for sale or lease of subdivision interests is false, untrue or misleading within the meaning of those terms in Sections 10140, 10177(c), 11022 and 17500 of the Business and Professions Code shall include, but shall not be limited to the following:

- (1) Advertising shall not imply a use of a subdivision interest that is not set forth in the Notice of Intention and Questionnaire comprising the application for a public report or permit.
- (2) A subdivision shall not be advertised under a name, designation or appellation that is not set forth in a Notice of Intention and Questionnaire.
- (3) A subdivision shall not be advertised by a name or trade style which implies, contrary to fact, that the subdivider or his agent is a bona fide research organization, public agency, nonprofit organization or similar entity.
- (4) No improvement, facility or utility service may be advertised unless it has been completed or installed and is available for use, or unless completion and availability for use are assured through bonding or other arrangements approved by the commissioner. If not completed, the estimated date of completion shall be set forth in the advertising.
- (5) There shall be no reference to the prospective availability of private facilities outside of the subdivision for the use and enjoyment of purchasers of subdivision interests if the facilities are to be constructed or installed by the subdivider or an affiliated entity unless financial arrangements for completion or installation have been approved by the commissioner.
- (6) There shall be no reference to proposed or uncompleted private facilities over which the subdivider has no control unless the estimated date of completion is set forth and unless evidence has been presented to the commissioner that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.
- (7) Unless the facilities and improvements listed below have been completed, or unless financial and other arrangements for completion have been made, subdivided land offered for residential use shall not be described as "improved", "developed", or by similar terms without disclosure of any facility or improvement listed below that is not included in the offering:
  - (A) Paved roads within the subdivision.
  - (B) A potable water system.
  - (C) A sewage system.
  - (D) A source of electricity at the building site.
- (8) Reference shall not be made to a proposed public facility or project which purports to affect the value and utility of subdivided lands without a disclosure of the existing status of the proposed facility based upon information supplied or verified by the authority responsible for the public facility or project.
- (9) A subdivider shall not advertise the availability of financing for on-site construction unless he has a bona fide written expression of an intention to finance such construction by a recognized lender or unless the subdivider has established to the satisfaction of the commissioner that financing of on-site construction will be provided by a source other than a recognized lender.
- (10) Pictorial or illustrative depictions of the subdivision and surrounding lands must accurately portray the land as it exists and proposed improvements as they will be constructed.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(11) Pictorial or illustrative depictions other than unmodified photographs shall bear a prominent disclosure identifying the nature of the depiction, e.g., ARTISTS CONCEPTION and a legend identifying those improvements which are not then in existence.

(12) If a map or diagram is used to show the location of the subdivision in relation to other places, actual road miles from each other place to the subdivision shall be shown or the map or diagram shall be prepared to scale and shall include a scale of miles.

(13) If there is advertising of streets, roads, sewers, storm drains or other utilities which have not been accepted for maintenance by a public entity, that fact must be disclosed in the advertising. Rights-of-way for passenger vehicles to a subdivision or to lots within a subdivision which have not been accepted for maintenance by a public entity shall be adequately described in terms of roadbed and surfacing.

(14) If the existence of a lake, river, canal or other body of water, which is subject to a fluctuating water level other than through natural causes, is advertised as a feature of the subdivision, any significant effect of the fluctuation upon the use of the water facility and upon the subdivision interests shall be described.

(15) No advertisement shall imply that a facility is available for the exclusive use of purchasers of subdivision interests if a public right of access or of use of the facility exists.

(16) There shall be no reference to the availability for use by owners of subdivision interests of private clubs or facilities in which an owner will not acquire a proprietary interest through purchase of a subdivision interest without an accompanying disclosure that the existence of the facilities and their availability for use by subdivision interest owners are at the pleasure of the owner of the facility.

(17) An advertisement of any facility in which a purchaser will acquire a proprietary interest with his purchase of a subdivision interest must set forth the estimated costs and other obligations of the purchaser with respect to the facility or shall refer the purchaser to a fact sheet or similar source of this information.

(18) No representation may be made that subdivision interests being offered for sale can be further divided unless a full disclosure is included as to the legal requirements for further division of the interests.

(19) Subdivision interests may not be advertised as available at a particular minimum price if the number of subdivision interests available at that price comprise less than 10% of the unsold inventory of the subdivider, unless the number of lots then for sale at the minimum price is set forth in the advertisement.

(20) Advertising of a discounted purchase price shall not be made unless the subdivider has established base prices for application of the discount through a substantial number of sales at base prices.

(21) A prospective increase in the price of a subdivision interest other than an interest offered with an on-site residential, commercial or industrial structure may not be implied nor shall a price increase of such a subdivision interest be announced more than sixty days prior to the date that the increase will be placed into effect.

(22) If the phrase "closing costs only" or similar terminology is used to describe the price of a subdivision interest, the estimated dollar amount of the costs must be set forth in the advertisement.

(23) The total amount of any special bonded indebtedness, or the range of such bonded indebtedness, against the subdivision interests shall be set forth in any advertisement which states or implies that off-site improvements for the subdivision have been completed and paid for in connection with the development of the project. If the selling price of a subdivision interest is advertised, the special bonded indebtedness against that subdivision interest shall be given equal prominence with the selling price unless the bonded indebtedness is included in the advertised selling price.

(24) No representation shall be made as to the availability of a resale program offered by or on behalf of the subdivider unless the resale program has been made a part of the offering as submitted to the commissioner.

(25) An asterisk or other reference symbol may be used to explain, but not to contradict or to change the ordinary meaning of the material in the body of the advertisement.

(26) Unless an offer made in connection with a sales promotion is unequivocally without conditions, the terms "free", "no obligation" or terms of similar import may not be used to describe that which is offered.

(27) Offers of travel, accommodations, meals or entertainment at no cost or reduced cost, the purpose of which is to promote sales, shall not be described as "awards", "prizes" or by words of similar import.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(28) Offers or solicitations of trip reservations to visit subdivided property or any other place where a sales presentation for subdivided property is to be made shall set forth all conditions, limitations or qualifications that will be applied before the recipient will be allowed to make the trip.

(29) The approximate retail value of any gift, prize or premium offered through an advertisement to prospective purchasers shall be set forth in the advertisement.

(30) Complete rules and procedures for any contest or drawing advertised in connection with the marketing of subdivision interests shall be included in the advertisement, or the advertisement shall state the means by which a person can secure full information concerning said rules and procedures prior to his participation in the contest or drawing.

(31) Advertising shall not include testimonials or endorsements which contain matters which the subdivider would be precluded by law or regulation from making in his own behalf.

(32) An offer or inducement to purchase which purports to be limited as to quantity or restricted as to time shall set forth the numerical quantity and/or time applicable to the offer or inducement.

(33) An advertisement or an offering of undivided or fractional interests in a subdivision, which does not include a right of exclusive ownership or occupancy of a particular lot, parcel or unit by the purchaser, shall disclose the total number of undivided or fractional interests to be offered for sale in the subdivision.

(34) If the subdivision offering involves something less than a fee interest with an exclusive and perpetual right to occupy a lot, parcel or unit, e.g., a leasehold or time-sharing-ownership interest, the limitations and restrictions on occupancy rights shall be included in the advertisement or the advertisement shall refer the purchaser to a fact sheet or similar source of this information.

(35) No direct mail advertisement purporting to have resulted through a referral shall be used unless the solicitation includes the name of the person making said referral.

(36) Investment merit or profit potential of a subdivision interest other than an interest which is offered with an on-site residential, commercial or industrial structure shall not be expressed or implied unless the commissioner has determined from evidence submitted by or on behalf of the subdivider that the representation is neither false nor misleading.

(37) Statements appearing in the public report for a subdivision shall not be quoted, paraphrased or cited out of context nor shall any part of the public report be underscored, italicized, bold faced or otherwise highlighted except in strict conformance with highlighting in the public report itself.

### **2799.2. Advertising Review Fee.**

A submission of each advertisement to the Department for approval pursuant to Section 11022 of the Code shall be accompanied by a fee of seventy-five dollars (\$75).

### **2800. Notification of Material Change.**

The owner of a subdivision which is the subject of an outstanding public report shall immediately report in writing to the Real Estate Commissioner relevant details concerning any material change in the subdivision itself or in the program for marketing the subdivision interests. A material change in the subdivision or in the offering shall include, but shall not be limited to the following:

(a) The sale, conveyance, including a transfer of title in trust, or the granting of an option to another to acquire, five or more subdivision interests in a subdivision other than a time-share project or twelve or more time-share estates or time-share uses in a time-share project.

(b) Change in the name or organization of the subdividing entity such as incorporation, dissolution of corporation or change in corporate or fictitious business name.

(c) Change in purchase money handling procedures under Section 11013.2 or 11013.4 of the Code including but not limited to a change in name or location of escrow or trust account depository or the creation of a blanket lien or encumbrance affecting a lot, parcel or unit of subdivided land being offered for sale.

(d) Change in methods of marketing or conveyance of subdivision interests, including but not limited to the following:

(1) Use of real property sales contracts, lease-option agreements or similar marketing instruments.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(2) Special sales inducements involving a financial commitment to purchasers by or on behalf of the subdivider such as buy-back agreements, special interest rates or a short-term basis and prizes, gifts or premiums.

(e) Inability of the subdivider to fulfill agreements and assurances to purchasers of subdivision interests given by the subdivider to the commissioner in the application for a public report.

(f) Creation or discovery of latent hazards affecting the subdivisions such as adverse geologic conditions not apparent at the time of issuance of the current public report for the subdivision.

(g) Addition of common areas or common facilities for the use and enjoyment of owners in the subdivision which were not contemplated at the time of issuance of the current public report for the subdivision.

(h) A relocation of easements affecting unsold subdivision interests.

(i) The creation of a district, or the annexation of the subdivision into a district, having the power to tax or levy assessments against real property interests within the subdivision.

(j) An increase of 20% or more or a decrease of 10% or more in the regular assessment charged by an Association against owners in a common-interest subdivision over the amount of the regular assessment reflected in the current public report for the subdivision.

(k) Delinquencies in the payment of regular assessments by owners within a common-interest subdivision resulting in the receipt by the Association of income which is more than 10% less than scheduled income from said assessments.

(l) A proposed change in the use for which the subdivision is offered as, for example, from residential to investment or a proposed change from an offering of the sole and exclusive use of a unit in a common-interest subdivision to a program involving the sharing of ownership or use with others as, for example, a time sharing program.

(m) Changes in the means for furnishing potable water, sewage disposal and other public services to lots, parcels or units within the subdivision.

(n) Any change in the configuration of the subdivision interest being offered for sale from the configuration according to the subdivision map or parcel map upon which the current public report for the subdivision was based.

(o) An amendment to the CC&Rs or other governing instruments for the subdivision or for an association of owners of subdivision interests.

(p) Failure by the subdivider as an owner of interests in a common interest subdivision to pay regular assessments where:

(1) Assessments are payable on a monthly basis and the subdivider has failed to pay three or more months of such assessments.

(2) Assessments are not payable on a monthly basis and the subdivider has failed to pay such assessments within three months after such assessments become due and payable.

(q) A program which does not comply with Section 2792.10 in which the subdivider undertakes to subsidize the cost of operating and maintaining common areas and of providing services in lieu of payment of regular assessments by the subdivider.

(r) The affiliation by a single-site time-share project as defined in Section 11003.5 of the Code with: 1) other time-share projects or accommodations under a contractual or membership program through a mandatory reservation system or 2) a mandatory reservation system.

### **2801.5. "Subdivider" Defined.**

The term "any person" in Section 11010 and the terms "owner" and "subdivider" in Sections 11012 and 11018.1 of the Code include any person, who at any point in time, owns, or has an option or contract to acquire, the subdivision interests listed in (a) or (b) below for purposes of sale, lease or financing if the subdivision interests were acquired or are to be acquired from the original recipient of a public report for the subdivided land, or from a person who succeeded to the interest of the original recipient in five or more subdivision interests in a subdivision other than a time-share project or in twelve or more time-share estates or uses in a time-share project:



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (a) Five or more subdivision interests in a subdivision other than a time-share project.
- (b) Twelve or more time-share estates or time-share uses in a time-share project.

Except as provided in Section 11010.5 of the Code, an "owner" or "subdivider" as herein defined shall not offer for sale or lease, nor cause to be offered for sale or lease, any of the subdivision interests hereinabove referred to unless a subdivision public report has been issued by the Department expressly authorizing the sale or lease of the interests by or on behalf of said owner or subdivider.

### **2803. Noncontiguous Parcels.**

If the notice of intention referred to in Section 11010 of the Code includes lots, parcels or units of subdivided land that are not contiguous to each other, the commissioner will determine which of the lots, parcels or units are sufficiently close together and sufficiently similar to each other in physical and other characteristics to be included within the coverage of a single public report.

### **2804. Abandoning Application For Public Report.**

- (a) The commissioner may abandon an application for a final, conditional, amended, or renewed public report, if:
    - (1) The data required by Section 11010 has not been furnished within three years from the date a notice of intention was filed for the subdivision public report; and
    - (2) Six months have elapsed since the commissioner has given notice of deficiencies or substantive inadequacies contained in the documents which are required to make the filing substantially complete and the deficiencies and inadequacies have not been corrected by the applicant; and
    - (3) The term of any one-year extension of time in which to complete the application, as provided in subdivision (d), has elapsed.
  - (b) Ninety (90) days prior to abandoning an application the commissioner shall mail to the applicant and the applicant's designated representative, notice of the commissioner's intent to abandon the application. The notice shall include a statement that the applicant may, in accordance with subdivision (d), file a petition to keep the application open.
  - (c) Sixty (60) days or more following the mailing of the notice required by subdivision (b), the commissioner may issue a final notice of intention to abandon the application. The application shall be deemed abandoned thirty (30) days after the final notice is mailed to the applicant and the applicant's designated representative, unless, prior to the expiration of the thirty (30) day period, a one-year extension has been granted pursuant to subdivision (d).
  - (d) The commissioner, on his own motion, or after receipt of a petition from the applicant or the applicant's designated representative, may, under the following terms and conditions, grant a one-year extension in order to allow the applicant to complete the application:
    - (1) The petition is received prior to the expiration of the thirty (30) day notice period referred to in subdivision (c).
    - (2) The petition sets forth reasons of hardship or justifiable extenuating circumstances explaining why the file has been inactive. Hardship and justifiable extenuating circumstances shall include mistake, inadvertence, surprise, excusable neglect, or circumstances beyond the control of the applicant or the applicant's designated representative.
- Written notice of the decision to grant or deny the petition will be mailed or delivered to the applicant and the applicant's designated representative, within thirty (30) calendar days after receipt of the petition.
- (e) The commissioner may grant one or more one-year extensions, provided that the application has not been abandoned as provided in subdivision (c).
  - (f) The term "applicant" as used in this section shall have the same meaning as the term "subdivider" as used in Section 11018.13 of the Code.

## **Article 12.1. Out-of-State Subdivision Offerings**

### **2805. Application.**

- (a) An application for a permit to sell or lease or to offer to sell or lease interests in a subdivision situated outside of this state pursuant to Article 8.5 of Chapter 3 of the Real Estate Law shall be made on a form prescribed by the Department at its principal office in Sacramento along with the applicable fee.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(b) The application shall be signed by or on behalf of the person to whom the permit is to be issued or by an agent with appropriate written authorization on behalf of the person to whom the permit is to be issued. If executed within California, the information in the application and in the document submitted therewith shall be certified to be true under penalty of perjury or verified before a notary public or other person qualified to administer oaths. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.

### **2805.1. Filing Fees.**

(a) The filing fees in connection with applications to the Department pursuant to Article 8.5 of Chapter 3 of the Real Estate Law shall be the following:

- (1) One thousand six hundred fifty dollars (\$1,650) plus ten dollars (\$10) for each subdivision interest to be offered for an original permit application.
- (2) Five hundred fifty dollars (\$550) plus ten dollars (\$10) for each subdivision interest to be offered that was not permitted to be offered under the permit to be renewed for a renewal permit application.
- (3) Four hundred dollars (\$400) plus ten dollars (\$10) for each subdivision interest to be offered under the amended permit for which a fee has not previously been paid for an amended permit application.
- (4) Five hundred dollars (\$500) for a conditional permit application.

(b) The maximum fee for an original, renewal or amended permit shall not exceed \$7,500 regardless of the number of interests authorized to be offered for sale or lease.

### **2806. Statutory Provisions Governing Out-of-State Subdivisions.**

(a) The following provisions of Division 4 of the Code shall govern the sale or lease and the offering for sale or lease of timeshare estates and timeshare uses in out-of-state subdivisions pursuant to Articles 8.5 and 9 of Chapter 3 of Part 1 of Division 4 of the Code: Sections 11003, 11003.2, 11003.5, 11004, 11007, 11010, 11012, 11013, 11013.1, 11013.2, 11013.3, 11013.4, 11013.5, 11014, 11018, 11018.1, 11018.5, 11018.6, 11018.7, 11018.8, 11018.9, 11018.10, 11018.11, 11018.12, 11018.13, 11021, 11022, 11024, and 11200 of Part 2, Division 4 of the Code.

(b) The term "public report" in Sections 11013.5, 11018, 11018.1, 11018.5, 11018.7, 11018.8, 11018.9, 11018.10, 11018.12 and 11018.13 of the Code shall be read to mean "permit."

### **2806.5. Inducement to Out-of-State Solicitation.**

The terms "sale," "sell," "sell or lease," and "offer for sale or lease" in Sections 10249, 10250 and 10261 of the Code include any written or oral communication which is disseminated or otherwise used within this state for the purpose of inducing a resident to travel to another state or country for a presentation or solicitation intended to cause the person to purchase or lease subdivision interests located outside of this state.

## **Article 12.2. Time-Share Projects**

### **2810. Substantially Complete Application – Time-Share Project.**

An application for a final subdivision public report for a time-share project is "substantially complete" within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

(a) For every time-share project:

- (1) Subdivision filing fee including fee for preliminary public report if applicable.
- (2) Completed subdivision questionnaire and supplemental questionnaires where applicable.
- (3) Certificate of qualification from Secretary of State if applicant is a foreign corporation.
- (4) Consent to service of process upon Secretary of State if applicant is a nonresident of California.
- (5) Current preliminary title report for all dwelling units comprising the time-share project.
- (6) Proposed or existing covenants, conditions and restrictions for subdivisions in which dwelling units of the time-share project are located.
- (7) Where applicable, Department of Corporations permit or interpretive opinion or copy of application for permit or request for interpretive opinion submitted to Department of Corporations.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (8) Assessment and improvement bond information if applicable to dwelling units in the project.
- (9) Exemplars of all contracts, deeds, fact sheets and other instruments to be used in marketing, financing and conveyancing of time-share interests.
- (10) Exemplar of escrow instructions for the sale of time-share interests including at least the following:
  - (A) Name and address of escrow depository.
  - (B) A description of the nature of the transaction.
  - (C) Conditions, including percentage presale condition that must be satisfied before escrow can be closed.
  - (D) Provision for the return to a prospective purchaser of funds deposited toward the purchase of a time-share interest if the escrow for the transaction has not closed on or before a given date.
- (11) Format of bond or other device to effect compliance with Sections 11013.2 and 11013.4 of the Code.
- (12) Format of bond or other security device and copy of instructions to escrow depository for compliance with Section 2812.3.
- (13) Copy of The Declaration to be recorded for the project pursuant to Section 2811.
- (14) Copy of trust agreement for the project if applicable.
- (15) Copy of proposed agreement for management of the project.
- (16) Format of fidelity bond to be obtained for the managing agent of the project and other employees who will have custody or control of funds of the Association.
- (17) Copy of letter giving notice of the proposed dedication to a time-share project to local governments – and, where applicable, to the California Regional Coastal Commission – in which dwelling units of the project will be located.
- (18) Completed documents for reservations and reservation deposits if a preliminary public report is requested.
- (19) Evidence of financial arrangements for renovation or remodeling of dwelling units if renovation or remodeling included in the offering.
- (20) Evidence of financial arrangements for any guarantee or warranty included in the offering.
- (21) Detailed budget reflecting estimated expenditures and reserves for maintenance of the dwelling units and operation of the time-share program.
- (22) Statement from county assessor, or other appropriate property tax assessing agency, as to how dwelling units dedicated to time sharing will be assessed for the purpose of property taxation or in the alternative, a statement from the tax assessing agency that it has not determined how time-share units will be assessed and that it does not expect to make that determination within the succeeding 120 days.
- (23) Detailed description of the furnishings and other personal property to be included in the time-share offering.
- (24) Copies of all contracts and promotional and informational material pertaining to a program included in the time-share offering involving the exchange of occupancy rights by owners in the project with owners of interests in other time-share projects.
- (25) In a time-share project which comprises less than all of the dwelling units in a hotel, motel or similar commercial lodging establishment and in which the dwelling units not part of the time-share project are concurrently used for transient accommodations, a copy of the proposed contract for the following:
  - (A) Arrangements for temporary use for transient accommodations of dwelling units comprising the time-share project and temporary use by the time-share project of units regularly used for transient accommodations.
  - (B) Apportionment of the costs of operation of the hotel/motel that are for the joint benefit of units in the time-share project and units for transient accommodations.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(26) Agreement of sponsor to subsidize maintenance and operation of the time-share project where applicable.

(27) Duplicate budget package for departmental analysis of proposed budget for operation and maintenance of the project.

(28) Description of each incidental benefit, including user fees or costs associated therewith, and any restrictions upon use or availability.

(b) For every time-share project involving newly-built dwelling units which have not been previously occupied:

(1) All of the applicable documents and information listed under subdivision (a) above.

(2) Evidence of availability of domestic utilities and services to the project.

(3) Evidence of environmental impact evaluation by lead agency if applicable.

(4) Evidence of financial arrangements to assure completion of the dwelling units if applicable.

(5) Condominium plan if the subdivision is a condominium development for which a public report (permit) has not been issued.

(6) Evidence of financial arrangements for completion of common areas and facilities if the common-interest subdivision is one for which a public report (permit) has not been issued.

(c) For every time-share project with dwelling units in a condominium development or other common-interest subdivision:

(1) All of the applicable documents and information listed under subdivisions (a) and (b) above.

(2) Proposed or existing governing instruments for the common-interest subdivision.

(3) Copies of all contracts or proposed contracts obligating the owners' association of the common-interest subdivision if the subdivision is one for which a public report has not been issued.

(4) If included in the subdivision offering, a copy of agreement of developer to subsidize maintenance and operations of the common-interest subdivision if a public report (permit) has not been issued for the subdivision.

(5) Financial arrangements to assure performance of the subsidization agreement referred to in (4) above if applicable.

(6) Latest balance sheet and annual operating statement for the owners' association for the subdivision.

(7) Detailed pro-forma budget reflecting estimated ownership, maintenance and operational expenses and reserves for the subdivision.

(8) Financial arrangements to assure fulfillment of subdivider's obligation to pay assessments for unsold subdivision interests if public report (permit) has not been issued for the subdivision.

(9) Copy of letters by which the sponsor has given notice of the proposed dedication of a dwelling unit to a time-share project to the owners' association of each common-interest subdivision in which a dwelling unit of the time-share project is located.

(d) For a single-site time-share project with a mandatory reservation system:

All of the applicable documents and information listed under subdivisions (a), (b) and (c) above.

(2) Copy of affiliation agreements, rules, policies and procedures for the reservation system.

(3) Copy of all marketing materials, including brochures, booklets, flyers, fact sheets and advertising that will be used in promoting the sale of the time-share project in order to insure compliance with Sections 11003.5 and 11018.10 of the Code and other applicable provisions of law.

### **2810.1. Regulations Applicable to Time-Share Projects.**

In addition to the regulations in this Article 12.2, the following sections of Article 12 for administration of the Subdivided Lands Law are applicable to time-share projects: Sections 2790, 2790.1, 2790.2, 2791, 2791.1, 2791.2, 2791.4, 2791.6, 2791.8, 2792.3, 2793, 2795, 2795.1, 2795.3, 2798, 2799.1, 2801.5, 2804 and 2805.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **2810.2. Availability and Suitability for Time-Share Project.**

(a) An applicant for a public report for a time-share project shall present evidence of the following for each dwelling unit of the project:

(1) That the unit is presently suitable for human occupancy or that financial arrangements acceptable to the commissioner have been made to complete construction or renovation of the dwelling unit to make it suitable for human occupancy on or before the first date for occupancy by a time-share owner.

(2) That the unit is owned or leased by the sponsor of the time-share project or is the subject of an enforceable option or contract under which the sponsor will build, purchase or lease the unit.

(b) If a dwelling unit in a time-share project is located within a local governmental jurisdiction and/or subdivision of real property in which the dedication of dwelling units to time sharing is expressly prohibited by ordinance or recorded restriction, either absolutely or without a permit or other entitlement from the governing body, the applicant for a public report must present evidence of a permit or other entitlement by the appropriate authority for the local government or the subdivision.

### **2810.4. Addition of Dwelling Units to the Project.**

(a) The addition of a dwelling unit to a time-share project will not be approved by the commissioner unless the sponsor of the project has demonstrated to the satisfaction of the commissioner that the addition of the unit will not result in a diminution of the benefits to, or an increase in the burdens upon, existing owners in the project.

(b) To facilitate the demonstration referred to in subdivision (a), the sponsor of a time-share project which contemplates future applications for subdivision public reports authorizing the addition of dwelling units to the project as time-share interests in existing units are sold, should present to the Department an overall plan for the project at the time of application for the original public report for the sale of interests in the project, or as soon thereafter as such a plan is formulated.

### **2810.6. Notification of Material Change.**

The sponsor of a time-share project which is the subject of an outstanding public report shall immediately report to the Department, relevant details concerning any material change in the project itself or in the program for marketing the time-share interests. A material change in the project or in the offering includes, but shall not be limited to, the following:

(a) The sale, conveyance or the granting of an option to another to acquire 12 or more time-share estates or time-share uses in a project.

(b) Deletion of a dwelling unit from the project or addition of a dwelling unit not authorized under an existing subdivision public report for the project.

(c) Change in the name or form of organization of the sponsor such as incorporation, dissolution of a corporation or a change in the corporate or fictitious business name.

(d) Change in the methods of marketing or the conveyancing of time-share interests such as the use of real property sales contracts and the use of special sales inducements.

(e) Change in purchase money handling procedures previously approved by the Department including but not limited to a change in the escrow depository or the creation of an encumbrance affecting more than one time-share interest in the project.

(f) Resignation of the trustee or other change in any of the terms of the trust agreement for the project.

(g) The existence of either of the following conditions with respect to the corpus of the trust.

(1) Insufficient funds in the trust to satisfy the trust fund provision for payment of debt service, property taxes, assessments and/or insurance premiums for the trust property.

(2) Insufficient non-delinquent installment sales contracts and/or promissory notes to satisfy the provision of the trust agreement for payment of the aggregate principal balance owing under a blanket encumbrance against the trust properties.

(h) Any legal or physical condition rendering a dwelling unit of the project unusable by time-share owners.

(i) Litigation undertaken by a governmental entity or subdivision owners' association seeking to prohibit or restrict the dedication of a dwelling unit to the time-share project.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(j) An annual budget for a time-share project which will necessitate a regular annual assessment that is more than 10 percent greater than the regular annual assessment reflected in the current public report for the time-share project.

(k) An amendment to any provision of the recorded time-share declaration.

(l) A change in any aspect of the offering for the project which will cause information in the current public report for the project to be incorrect or misleading.

### **2810.7. Alternative Arrangements for Purchaser Protection.**

(a) In recognition of the impossibility or impracticability of a proposed time-share project satisfying some of the requirements of these regulations because of factors over which the sponsor has little or no control, the commissioner may accept arrangements – other than those prescribed by these regulations – which in the judgment of the commissioner will give rights and remedies affording benefits and protections to time-share owners comparable in scope though not necessarily in nature to those designed to be afforded by the regulations.

(b) The factors referred to in subdivision (a) include, but are not necessarily limited to the following:

- (1) Number of time-share owners and/or dwelling units in the project.
- (2) Laws of the state or country in which dwelling units of the project are located.
- (3) Number of California time-share owners in relation to the total number of owners in the project.
- (4) Number of sales of interests in the project made without benefit of a public report or permit based upon reasonable, bona-fide reliance upon a written determination by the Department that it did not have jurisdiction over the offering.

### **2811. Declaration of Dedication.**

(a) The sponsor of a time-share project shall cause to be recorded prior to the closing of the first sale of a time-share interest in each dwelling unit in the project, a declaration (The Declaration) dedicating the dwelling unit to the time-share project and incorporating all covenants of the grantor or lessor, all applicable "reasonable arrangements" from among those referred to in Sections 2812 and 2813 and the following provisions:

- (1) Organization of an association (Association) of time-share interest owners.
- (2) A description of the real and personal property for the common ownership and/or use of the time-share interest owners.
- (3) A description of the services to be made available to time-share interest owners under the time-share program.
- (4) Transfer to the Association of control over the property and services comprising the project.
- (5) Procedures for calculating and collecting regular and special assessments from time-share owners to defray expenses of the project and for related purposes.
- (6) Preparation and dissemination to time-share owners of budgets, financial statements and other information related to the project.
- (7) Procedures for terminating the membership and selling the interest of a time-share owner for failure to pay regular or special assessments.
- (8) Policies and procedures for the disciplining of members for failure to comply with provisions of the governing instruments for the project including the late payment of assessments.
- (9) Procedures for employing and for terminating the employment of a managing agent for the project.
- (10) Adoption of standards and rules of conduct for the use of dwelling units by time-share interest owners.
- (11) Establishment of the rights of owners to the use of a dwelling unit according to schedule or under a first reserved, first served priority system.
- (12) Compensating use periods or monetary compensation for an owner in a time-share estate project if a dwelling unit cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the Association or managing agent.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(13) Comprehensive general liability insurance for death, bodily injury and property damage resulting from the use of a dwelling unit within the project by time-share owners, their guests and other users.

(14) Restrictions upon partition of a time-share estate project.

(15) Policies and procedures for the use of dwelling units for transient accommodations or other income-producing purposes during periods of non-use by time-share owners.

(16) Policies and procedures for the inspection of the books and records of the project by time-share owners.

(17) Procedures for the amendment of The Declaration and other governing instruments for the project.

(18) Where applicable, annexation of additional dwelling units to the time-share project.

(19) Policies and procedures in the event of condemnation, destruction or extensive damage to a dwelling unit(s) including provisions for the disposition of insurance proceeds or damages payable on account of damage or condemnation.

(20) Policies and procedures on regular termination of the project.

(21) Policies and procedures for collective decision making and the undertaking of action by or in the name of the Association including, where applicable, representation of time-share dwelling units in an Association for the common-interest subdivision in which the dwelling units are located.

(22) Where applicable, allocation of the costs of maintenance and operation between those dwelling units in a hotel, motel or similar commercial lodging establishment dedicated to a time-share project and dwelling units in the same establishment being used for transient accommodations.

(23) Policies and procedures for entry into dwelling units of the project under authority granted by the Association for the purpose of cleaning, maid service, maintenance and repair including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

(24) For a single-site time-share project associated with other time-share projects under a mandatory reservation system, policies and procedures for the operation of the mandatory reservation system and for the termination of the reservation system affiliation agreement. A priority reservation system within the meaning of this Section and Section 11003.5 of the Code shall include a time period of not less than three months during which owners of the single-site time-share project may make a reservation prior to the time period in which other persons may make reservations at the single-site time-share project.

(b) The Declaration shall, insofar as possible, satisfy the requirements of Section 1468 or Sections 1469 and 1470 of the Civil Code for real property located in this state and the requirements of comparable statutory provisions of any other state or jurisdiction in which a dwelling unit in the time-share project is situated.

### **2812. Reasonable Arrangements in Time-Share Projects.**

Standards for a time-share project substantially in accordance with those prescribed in Sections 2812.1 through 2812.10 and 2813 through 2813.8 will ordinarily be considered by the commissioner as "reasonable arrangements" within the meaning of Sections 11018.5(d) and (e) of the Code.

#### **2812.1. Transfer of Dwelling Units to Association or in Trust.**

(a) In a time-share project in which the fee or a long-term leasehold interest in all or some of the dwelling units and in appurtenant real and personal property is to be transferred to the Association or to a corporate trustee under a trust agreement, the conveyance shall be made prior to the closing of the escrow for the first sale of a time-share interest in the dwelling unit.

(b) The time-share sponsor may reserve easements in the real property conveyed for purposes reasonably related to the conduct of commercial activities in the same structure in which the dwelling unit of the time-share project is located provided that the sponsor covenants to use the easements in a manner that will minimize any adverse impact upon the use and enjoyment of the dwelling unit by any time-share owner occupying it.

#### **2812.2. Conveyance of Dwelling Units in Trust.**

(a) The Department will ordinarily require that each of the dwelling units in a time-share use project be conveyed to a trustee acceptable to the Department prior to the closing of the escrow for the first sale of a time-share use which entitles the purchaser to occupy the unit in question.

(b) If the dwelling unit(s) in a time-share use project is conveyed to the trustee free and clear of any encumbrance (other than a lien of current real property taxes) affecting the interest of more than one time-share owner

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(hereafter blanket encumbrance), the trust instrument shall include, but shall not necessarily be limited to, the following:

- (1) Transfer of title to the dwelling units to the trustee.
- (2) The Association of time-share owners to be a party to the trust or an express third party beneficiary of the trust.
- (3) Notice to the Department of the intention of the trustee to resign.
- (4) Continuance of the trustee in that capacity until a successor trustee acceptable to the Department assumes the position.
- (5) Prohibition against any amendment of the trust instrument adversely affecting the interests or rights of time-share owners without the prior approval of the Association.
- (6) Instructions for the distribution of condemnation or insurance proceeds by the trustee.

(c) The Department will ordinarily require pursuant to Section 11013.2 of the Code that each of the dwelling units in a time-share estate project that is subject to a blanket encumbrance be conveyed to a trustee acceptable to the Department prior to the closing of the escrow for the first sale of a time-share estate which entitles the purchaser to occupy the unit in question.

(d) If a dwelling unit(s) in the project is conveyed to a trustee for the purpose of compliance with Section 11013.2 of the Code, the trust instrument shall ordinarily include the following provisions in addition to those set forth in subdivision (b) above:

(1) The deposit into trust, and the retention for the duration of the trust, of nondelinquent installment sales contracts and/or promissory notes of time-share purchasers having an aggregate principal balance owing not ordinarily less than 150 percent of the difference between the aggregate principal balance owing under blanket encumbrances against the dwelling unit(s) and the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket encumbrances.

(A) If the presale condition imposed by the Department pursuant to Section 2810.3 of these regulations is less than 150 percent referred to above or if the sponsor has otherwise lawfully closed the sales of time-share interests in a dwelling unit subject to a blanket encumbrance without having met the 150 percent requirement, the trust instrument shall include a provision requiring that the sponsor deposit into trust not less than one out of every two installment contracts and/or promissory notes thereafter executed by time-share purchasers until the 150 percent requirement has been met.

(B) The trust instrument shall further provide that if the 150 percent requirement has not been met within six months after execution of the trust instrument by the sponsor, the trustee shall thereafter retain in the trust, or apply to debt service on the blanket encumbrance, the entire amount of all installment payments received on contracts and/or promissory notes until the 150 percent requirement has been met.

(C) For purposes of this regulation, a contract or promissory note is deemed delinquent when an installment payment is more than 60 days past due.

(D) If the sponsor for purposes of satisfying the requirements of this subdivision (d) proposes to deposit installment sales contracts or promissory notes of obligors other than purchasers of interests in the time-share project into the trust, the sponsor shall have the burden of establishing the liquidated value of the notes and contracts to the satisfaction of the Department.

(2) The deposit into trust, and the retention for the duration of the trust, of funds in an amount at all times sufficient to pay the total of three successive monthly installments of debt service on the blanket encumbrance(s).

(A) If installments of debt service on a blanket encumbrance that is fully amortized are due less frequently than monthly, the funds retained in trust shall be sufficient to pay all installments becoming due within the next succeeding six months, or, if no installments are due within the next succeeding six months, the next installment due.

(B) If a blanket encumbrance against the trust property is an interest-only loan or contains a balloon payment provision or is otherwise not fully amortized under the terms for repayment, the trust instrument



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

shall require that the sponsor make monthly payments into the trust sufficient to pay debt service installments as they become due and to create a sinking fund to extinguish the debt at its maturity.

(3) Payment by the trustee of debt service on the blanket encumbrance, property taxes, assessments and insurance premiums, either as the entity having primary responsibility for such payments, or the entity secondarily responsible if the person with primary responsibility fails to make such payments in a timely manner.

(4) The deposit or investment by the trustee of funds constituting a part of the trust corpus in interest bearing accounts, treasury bills, certificates of deposit or similar investments.

(e) (1) In the case of a time-share use project, the trust for the dwelling unit shall be irrevocable during the time that any time-share interest owner has a right to the occupancy of a dwelling unit.

(2) In a time-share estate project, the trust for a dwelling unit shall be irrevocable until the extinguishment of all blanket monetary encumbrances against the dwelling unit.

### **2812.3. Security for Sponsor's Obligations as Owner of Interests.**

(a) To assure the fulfillment of the obligations of the sponsor of a time-share project to pay assessments as an owner of time-share interests in the project, the Department will ordinarily require that the sponsor furnish a surety bond, cash deposit or letter of credit.

(b) The bond, cash deposit or letter of credit referred to above shall be in an amount equal to 50 percent of the anticipated cost of operation and maintenance of the project – including the establishment of reserves for replacement and major repair – for an operational period of one year. The security shall be delivered to a neutral escrow depository, or to the trustee if title to the project has been delivered to the trustee, along with instructions signed by the sponsor for the benefit of the Association which shall provide as follows:

(1) The security shall remain available to pay any assessments for which the sponsor is liable and delinquent until the depository or trustee has received (1) written notice from the sponsor that sales of 80 percent of the time-share interests in the project have been closed and (2) written notice from the Association that the sponsor is not delinquent in the payment of assessments for which obligated.

(2) In the event of a dispute between the sponsor and the Association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the sponsor. The cost of arbitration shall ultimately be borne as determined by the arbitrator under the aforesaid rules.

### **2812.4. Subsidization by Sponsor.**

(a) In any time-share program in which the sponsor undertakes to subsidize the cost of operating the program and maintaining the project, the sponsor shall:

(1) Enter into a contract with the Association acceptable in form and content to the Department, which shall specify in detail the obligations of the sponsor and the methods to be used in valuing the goods and services furnished under the program.

The Department will ordinarily not approve a subsidization program unless provisions are made for the accumulation of reserves for replacement and major maintenance of the property comprising the project in accordance with accepted property management practices and for the transfer of the reserve fund to the Association on termination of the program.

(2) Furnish the Association with an executed copy of the subsidization contract within ten days after closing of escrow of the first sale (or lease) of a time-share interest.

(3) Furnish a bond or other device to secure the undertaking to the Association and to the owners.

(b) The security device referred to in (a)(3) above shall be delivered to the trustee or an escrow depository acceptable to the Department along with an executed copy of the subsidization contract and instructions to the escrow signed by the sponsor and on behalf of the Association. The instructions shall provide as follows:

(1) The escrow shall not release or exonerate the security device until it has received written notice from the Association that the sponsor has faithfully performed all of his obligations under the subsidization contract.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(2) In the event of a dispute between the sponsor and the Association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue or issues shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

The fee payable to the Association to initiate arbitration shall be submitted by the sponsor. The costs of arbitration shall ultimately be borne as determined by the arbitrator under the aforesaid rules.

### **2812.5. Covenant Not to Encumber.**

In a time-share use project, The Declaration shall include a covenant by the sponsor not to encumber the dwelling unit(s), after execution of The Declaration by the sponsor, without the written assent of not less than 51 percent of the time-share owners other than the sponsor.

### **2812.6. Prohibition Against Partition.**

(a) The Declaration shall prohibit every time-share owner and every other person acquiring any right, lien or interest in any dwelling unit in the project from seeking or obtaining, through any legal procedures, judicial partition of the unit or sale of the unit in lieu of partition and shall subordinate all rights that a time-share owner might otherwise have as a tenant-in-common in real property to the terms of The Declaration.

(b) Subdivision (a) shall not be deemed to prohibit a sale of a dwelling unit on termination of the time-share project or the removal of the unit from the project in accordance with applicable provisions of The Declaration.

### **2812.7. Concurrent Time-Share and Commercial Operation.**

(a) In a time-share project which comprises less than all of the living units of a hotel, motel, or other commercial lodging place (hereafter hotel/motel) and in which living units of the hotel/motel not dedicated to the time-share project are rented out for commercial purposes for the benefit of the sponsor concurrently with the operation of the time-share program, the Department will ordinarily require that the governing instruments for the project provide for the following:

(1) Management of the time-share project independent of the management of the commercial operation of the hotel/motel to the greatest extent practically and economically feasible. This requirement does not contemplate any prohibition or restriction on the use of personnel regularly furnishing materials and services in the commercial operation of the hotel/motel in furnishing the same or similar services to the living units in the time-share project.

(2) Separate books and records for the time-share project from the books and records for the commercial operation of the hotel/motel.

(3) Detailed provisions for equitable allocation between the time-share project and the commercial operation of costs of management and operation incurred for the joint benefit of units in the time-share project and units for commercial operations.

(4) Arrangements, the form and content of which shall be subject to approval by the Department, for temporary use for commercial operations of living units in the time-share project and for temporary use by time-share owners of living units regularly used in commercial operations.

(b) To implement subdivision (a), the Department may require the conveyance of a leasehold interest, equal in duration to the time-share program, in the units that comprise the time-share project to a trustee or independent entity or may require alternative arrangements to assure independent operation and control of the living units dedicated to the time-share project.

### **2812.8. Managing Agent Employment.**

(a) The Declaration shall require the employment of a managing agent for the project pursuant to a written management agreement which shall ordinarily include at least the following provisions:

(1) Delegation of authority to the managing agent to carry out the duties and obligations of the Association and/or the sponsor to the time-share owners.

(2) Authority of the managing agent to employ subagents.

(3) A term of not more than five years with automatic renewals for a three year period after expiration of the first term unless the Association by the vote or written assent of a majority of the voting power residing in members other than the sponsor determines not to renew the contract and gives appropriate notice of that determination.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(4) Termination for cause at any time by the governing body of the Association with provision for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association if requested by or on behalf of the managing agent.

(5) Not less than 90 days written notice to the Association of the intention of the managing agent to resign.

(6) Enumeration of the powers and duties of the managing agent in the operation of the program and the maintenance of the dwelling units comprising the project.

(7) Compensation to be paid to the managing agent.

(8) Records to be maintained by the managing agent.

(9) Periodic reports and other information to be communicated to the Association and/or time-share owners by the managing agent.

(10) A statement of the limitations on the powers of the managing agent to enter into contracts with third parties to furnish goods or services to the time-share project unless the managing agent has the prior authorization through a vote of the Class A members of the Association. Ordinarily the managing agent shall be precluded from entering into a contract on behalf of the Association for the furnishing of goods or services for the time-share project for a term longer than one year without the vote of a majority of the Class A members except as follows:

(A) A contract with a public utility company if the rates charged for the materials or services are regulated by a public utilities commission in which case the term of the contract shall not exceed the shortest term for which the utility company will contract at the regulated rate.

(B) Prepaid casualty and/or liability insurance policies provided however that a policy shall not be for a term of more than three years and must permit short rate cancellation by the insured.

(C) The following types of contracts if not to exceed five years duration and if the lessor or provider is not an entity in which the sponsor of the managing agent has a direct or indirect interest of 10% or more.

(i) Leases of furnishings of units in the project.

(ii) Lease agreements for laundry room fixtures and equipment.

(iii) Agreements for cable television services and equipment or satellite dish equipment and services.

(iv) Agreements for burglar alarm services and equipment.

(11) Fidelity bonding of the managing agent.

(12) Errors and omissions insurance coverage for the managing agent if available.

(13) Delineation of the authority of the managing agent and persons authorized by the managing agent to enter into dwelling units of the project for the purpose of cleaning, maid service, maintenance and repair including emergency repairs and for the purpose of abating a nuisance or dangerous, unlawful or prohibited activity being conducted in the unit.

(14) Delineation of the authority, or an express statement in negation of any authority, of the managing agent with respect to the administration of an exchange program, participation in which is included in the offering.

### **2812.9. Rental of Occupancy Periods to Public.**

(a) In a time-share project in which the occupancy of units is on a first reserved, first served basis rather than by preassignment of a specific occupancy period to a specific time-share owner, The Declaration may include provisions for the rental by the managing agent to the public of dwelling units not timely reserved for occupancy by a time-share owner according to the rules for the project.

(b) A sponsor may not reserve any occupancy period for the purpose of renting it to the public until expiration of the regularly prescribed time for the making of reservations for that occupancy period by other time-share owners.

(c) Except as provided in subdivision (d), revenue derived from the rental of dwelling units of the time-share project to members of the public in accordance with the provisions of The Declaration shall be for the benefit of the Association.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(d) Revenues from the rental of occupancy periods which have not been timely reserved by time-share owners in accordance with the project rules may inure to the benefit of the sponsor or an affiliate of the sponsor if the governing instruments expressly provide for all of the following:

- (1) The provision shall be effective only if and for so long as the sponsor, or an entity owned or controlled by the sponsor, or under common management and control with the sponsor, is the managing agent for the project.
- (2) The sponsor shall not reserve any occupancy period earlier than 45 days before the first day of that period.
- (3) The sponsor shall reimburse the Association for expenses incurred by or allocated to the time-share project in connection with the commercial occupancy of the unit.
- (4) A time-share owner's untimely request for occupancy shall be honored unless every dwelling unit of the project to which the owner would be entitled under the project rules but for the untimeliness of the request has been reserved by a time-share owner or has been rented to a member of the public before the managing agent's receipt of the time-share owner's untimely request for occupancy.
- (5) The sponsor shall submit to the Association not less than 30 days before the scheduled mailing of the annual report referred to in Section 2813.5(a)(2), a report for the preceding fiscal year setting forth the amount of revenues derived by the sponsor from the commercial rental of unreserved occupancy periods and the amount of money paid by the sponsor to the Association for expenses incurred by or allocated to the time-share project in connection with the commercial occupancy of units.
- (6) An annual special vote of time-share owners other than the sponsor on the question of retaining the provision as permitted hereunder or bringing it into conformance with subdivision (c) of this section.
  - (A) The first such special vote shall be conducted at the earlier of (i) the annual meeting of the Association following the sale of the time-share interest representing the 66 2/3 percentile interest of the total number authorized for sale under subdivision public reports or permits for the project or (ii) the annual meeting of the Association immediately preceding the expiration date of the management contract.
  - (B) The vote on this question shall be conducted annually for so long as revenues from the rental to the public of unreserved occupancy periods inure to the benefit of the sponsor or an affiliate of the sponsor.
  - (C) The vote of the time-share owners other than the sponsor on this question may be conducted without a meeting pursuant to a procedure established in accordance with subdivision (f) of Section 2813.
  - (D) The contractual provision in question shall be brought into conformance with subdivision (c) of this section if a bare majority of the time-share owners casting ballots on the question vote in favor of the proposal.

### **2812.10. Property and Liability Insurance and Fidelity Bonding.**

The Declaration shall require that the following insurance and fidelity bonding be at all times maintained in force to protect the interests of time-share owners in the project.

(a) Insurance against property damage as a result of fire and other hazards commonly insured against, covering all real and personal property comprising the project in an amount not less than 80 percent of the full replacement value of the property.

- (1) In a time-share use offering, the trustee shall be a named co-insured, and if for any reason, title to the dwelling unit is not held in trust, the Association shall be named as a co-insured as the agent for each of the time-share owners.
- (2) In a time-share estate offering, the Association shall be named as a co-insured if it has title to the property or as a co-insured as agent for each of the time-share owners if title is held by the owners as tenants in common.

(b) Liability insurance against death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the units of the time-share project.

- (1) The amounts of the insurance shall be determined by the Association, but shall not be less than \$500,000/\$1,000,000 for personal injury and \$100,000 for property damage.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(2) The liability insurance policy must provide as follows:

(A) All time-share owners as a class are named as additional insureds in a policy issued to the Association.

(B) The waiver by the insurer of its right to subrogation under the policy against any time-share owner or member of his household.

(C) No act or omission by a time-share owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or operate as a condition to recovery under the policy by any other person.

(c) Fidelity bonding of the managing agent and other employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time.

### **2812.11. Special Procedures for Enforcement of Sponsor's Obligations.**

(a) Special procedures specified herein shall be established under The Declaration for the enforcement of the following obligations of the sponsor to the Association and members of the Association:

(1) The completion of improvements included in the offering for which the sponsor has given a bond or other security to the Association to secure performance of the commitment of the sponsor to complete the improvements.

(2) The payment to the Association of regular and special assessments by the sponsor as the owner of time-share interests in the project.

(3) Subsidization by the sponsor of the cost of operating the program and maintaining the project.

(b) The sponsor shall, within 30 days after the end of each quarter of the Association's fiscal year, furnish to each member of the governing body of the Association at his or her residence address a statement containing the following information when applicable.

(1) A status report covering each improvement included in the offering which was scheduled for completion during the quarter according to the Planned Construction Statement for the project and each still-uncompleted improvement that was scheduled for completion during an earlier quarter.

(2) The number of time-share interests in the project owned by the sponsor as of the first and last day of the quarter.

(3) The total regular and special assessments which the sponsor became obligated to pay during the quarter as an owner of time-share interests.

(4) The total regular and special assessments paid by the sponsor to the Association during the quarter.

(5) The amount of any delinquency of the sponsor in the payment of regular and special assessments that has not been cured as of the date of the report to the governing body members.

(6) An itemized report of funds, goods and services furnished, or caused to be furnished, to the association under a subsidization program including monetary contributions to the reserves of the Association for replacement or major repairs of common facilities in the project and an itemized monetary valuation of goods and services furnished.

(c) If the statement of the sponsor referred to in subdivision (b) is not received by the governing body members within 45 days after the end of a quarter, or if the statement as received evidences a failure by the sponsor to fulfill an obligation to the Association to complete improvements, pay assessments as an owner time-share interests in the project or to subsidize the costs of operating the program and maintaining the project, the governing body shall meet specially, together or by conference telephone call, to discuss and to vote on the question of initiating action against the sponsor and/or the sponsor's surety to enforce the sponsor's unfulfilled obligations.

(d) The director of the association elected solely by the votes of members of the association other than the sponsor as described in Section 2813.2 of these regulations shall be empowered by the governing instruments to initiate an action in the name of the association and at the association's expense to enforce the sponsor's unfulfilled obligation if the governing body fails to meet to consider and vote on the question of enforcing the

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

sponsor's obligation within 75 days after the end of the quarter or if the governing body refuses to initiate such action after having met for that purpose. If the director elected solely by the votes of members other than the sponsor determines that it is in the best interest of the members of the association to initiate an action under the special authority, he shall do so in the name of the association within 90 days after the end of the quarter and the governing body shall thereafter take such steps as are necessary and appropriate in furtherance of the purpose of the action.

(e) Any disagreement or controversy between the sponsor and the Association with respect to the question of the fulfillment of the sponsor's obligations to complete and pay for improvements included in the offering, to pay for regular and special assessments as an owner of time-share interest in the project or to pay the costs of operating a time-share program and maintaining the project under a subsidization agreement shall, at the request of either party, be submitted to arbitration.

### **2813. Members' Meetings.**

(a) Unless impracticable because of the number of members of the Association, their places of residence in relation to each other, the international nature of the offering and other factors, provision shall be made for regular meetings of members of the Association of time-share owners. Ordinarily regular meetings of members shall be scheduled not less frequently than once each calendar year at a time and place to be fixed by the bylaws or by resolution of the governing body. The first meeting of the Association shall be scheduled not later than one year after the closing of the escrow for the first sale of a time-share interest in the project.

(b) Provision shall be made for special meetings of the Association to be promptly called by the governing body upon:

(1) The vote of a majority of the governing body; or

(2) Receipt of a written request signed by members representing at least 5 percent of the voting power of the Association residing in members other than the sponsor.

(c) Meetings of the Association shall be held at a suitable location that is readily accessible at reasonable cost to the largest possible number of members.

(d) Written notice of regular and special meetings shall be given to members by first class mail. This notice shall be given not less than 30 days and not more than 90 days before the scheduled date of the meeting. The notice, whether for a regular or special meeting, shall specify the place, day and hour of the meeting and a brief statement of the matters which the governing body intends to present, or believes that others will present, for action by the members.

(e) (1) The bylaws of the Association shall establish the quorum for a meeting of members at not less than 10 percent nor more than 33 1/3 percent, of the voting power of the Association residing in members other than the sponsor, represented in person or by proxy.

(2) In the absence of a quorum as prescribed by the bylaws, no business shall be conducted and the presiding officer shall adjourn the meeting sine die.

(3) If less than one-third of the total voting power of the Association is in attendance, in person or by proxy, at a regular or special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the meeting may be voted upon by the members.

(f) Any action that may be taken at any regular or special meeting of members may be taken without a meeting if the following requirements are met:

(1) A written ballot is distributed to every member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the member to return the ballot to the Association.

(2) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action.

(3) The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

(4) The written ballot distributed to members of the Association affords an opportunity for the member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

the Association and further provides that the vote of the members shall be cast in accordance with the choice specified.

(g) The bylaws of the Association may provide that governing body members may be elected by written ballot.

(h) A form of proxy may be distributed to each member to afford him or her the opportunity to vote in absentia at a meeting of members of the Association provided that it meets the requirements for a written ballot set forth in (f)(4) above and includes the name or names of members who expect to be in attendance in person at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent member's vote as specified in the form of proxy.

### **2813.1. Members' Voting Rights.**

(a) A member of an Association including associations which provide for unequal assessments against members, shall be entitled to one vote for each time-share interest owned.

(b) An Association may have two classes of members for voting purposes according to the following provisions:

(1) Each owner of a time-share interest other than the sponsor of the project shall be a Class A member. If a time-share interest is owned by more than one person, each owner shall be a Class A member, but only one vote may be cast for each interest.

(2) The sponsor shall be the Class B member and shall have one vote for each time-share interest owned by him which has been authorized to be offered for sale by the issuance of subdivision public report.

(3) Class B membership shall be automatically converted to Class A membership, and Class B membership shall thereafter cease to exist, when the total outstanding votes held by the Class B member falls below 20 percent of the total voting power of the Association.

(c) Except as otherwise expressly provided, no regulation which requires the approval of a prescribed percentage of the voting power residing in members other than the sponsor, or a prescribed percentage of the voting power of Class A members, for action to be taken by the Association, is intended to preclude the sponsor from casting votes attributable to the time-share interests which he owns. Governing instruments may therefore specify the following with respect to approval of action by the membership of the Association other than an action to enforce an obligation of the sponsor:

(1) In those associations in which Class A and Class B memberships exist, the vote or written assent of a prescribed percentage of the Class A voting power and the vote or written assent of the Class B member.

(2) In those associations in which a single class of voting membership exists, either as originally established or after the conversion of the Class B membership to Class A memberships, the vote or written assent of a prescribed percentage of the total voting power of the Association and the vote or written assent of a prescribed percentage of the voting power of members other than the sponsor.

### **2813.2. Governing Body Election and Make-up.**

(a) The governing body shall consist of three directors for an Association that does not contemplate more than 100 members and either five or seven directors for an Association that contemplates more than 100 members.

(b) (1) The first governing body shall consist of directors appointed by the sponsor. These directors shall serve until the first meeting of the Association at which time an election of all of the directors for the Association shall be conducted.

(2) A special procedure shall be established by the governing instruments to assure that at the first election of the governing body, and at all times thereafter, at least one of the incumbent directors has been elected solely by the votes of members other than the sponsor.

(3) A director who has been elected to office solely by the votes of the members of the Association other than the sponsor may be removed from the governing body prior to the expiration of his or her term of office only by a vote of a prescribed percentage of the voting power residing in members other than the sponsor.

(c) The terms of office of governing body members may be staggered provided that no person may serve a term of more than three years without standing for re-election.

### **2813.3. Governing Body Meetings.**

(a) Regular meetings of the governing body of the Association shall be held as prescribed in the bylaws, but not less frequently than annually.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (b) (1) Regular and special meetings of the governing body shall be held in or near a dwelling unit of the project unless a meeting at another location would significantly reduce the cost to the Association and/or the inconvenience to directors.
- (2) If the time and place of the regular meeting of the governing body is not fixed by the governing instruments, notice of the time and place of meeting shall be communicated in writing to directors not less than 30 days prior to the meeting provided that notice of a meeting need not be given to any governing body member who has signed a waiver of notice or a written consent to the holding of the meeting.
- (c) (1) A special meeting of the governing body may be called by written notice signed by any two members of the governing body.
- (2) The notice of a special meeting shall specify the time and place of the meeting and the nature of any special business to be considered.
- (3) Notice of a special meeting shall be communicated in writing to directors not less than 15 days prior to the meeting provided that notice of the meeting need not be given to any governing body member who signed a waiver of notice or a written consent to the holding of the meeting.
- (d) (1) Regular and special meetings of the governing body shall be open to all members of the Association provided that members who are not on the governing body may not participate in any deliberation or discussion unless expressly so authorized by the governing body.
- (2) The governing body may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.
- (e) A bare majority of the total number of authorized members of the governing body shall constitute a quorum for the conduct of business.
- (f) The governing instruments for the project shall provide for reimbursement by the Association for transportation expenses incurred and reasonable per diem payments to governing body members for attendance at regular and special meetings of the governing body.

### **2813.4. Regular and Special Assessments.**

- (a) Except as provided in subdivision (b), regular assessments to defray the expenses of maintaining the project and operating the time-share program shall be levied against each time-share interest owner according to the ratio that the number of time-share interests owned by an owner assessed bears to the total number of interests subject to assessments.
- (b) In a time-share project in which it can be demonstrated that operational and maintenance costs attributable to one owner are as much as 15 percent greater than the costs attributable to any other owner, the assessment against each owner in the project may be determined according to a formula or schedule under which assessments against each owner are equitably apportioned in accordance with operational and maintenance costs attributable to each owner.
- (c) A special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments except in the case where the special assessment is levied against a time-share owner(s) for the purpose of reimbursing the Association for costs incurred in bringing the owner(s) into compliance with provisions of the governing instruments for the time-share project.
- (d) All time-share interests in the project for which a public report has been issued including those interests held by the sponsor of the project are interests subject to the payment of regular and special assessments.
- (e) The governing body of the Association may be empowered by the governing instruments to impose, without the vote or written assent of the Association, a regular annual assessment per time-share interest which is as much as 20 percent greater than the regular annual assessment for the immediately preceding fiscal year. An annual assessment for each time-share interest which is more than 20 percent greater than the regular assessment per interest for the immediately preceding fiscal year may not be levied without the vote or written assent of a majority of the voting power of the Association residing in members other than the sponsor. An increase in the annual assessment attributable to an increase in real property taxes against dwelling units of the time-share project shall be excluded in determining whether the annual assessment is more than 20 percent greater than the regular assessment per interest for the preceding fiscal year.



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(f) Except as provided herein, special assessments against owners in a project may not be imposed without the vote or written assent of a majority of the voting power of the Association residing in members other than the sponsor. The governing body of the Association may be empowered by the governing instruments to impose special assessments without the vote or written assent of the Association as follows:

(1) Special assessments against all time-share owners in the project, other than a special assessment to restore or rebuild because of damage or destruction to a dwelling unit, which in the aggregate in any fiscal year do not exceed 5 percent of the budgeted gross expenses of the Association for that fiscal year.

(2) A special assessment for the repair or rebuilding of a dwelling unit(s) which does not exceed 10 percent of the budgeted gross expenses of the Association for the fiscal year in which the assessment is levied.

(3) Special assessments against an owner or owners for the purpose of reimbursing the Association for costs incurred in bringing the owner(s) into compliance with provisions of the governing instruments for the project.

(g) Regular assessments against all of the time-share interests in a dwelling unit of the project shall commence on the same date. Regular assessments shall ordinarily commence on the first day of the month following the closing of the escrow of the first sale of a time-share interest in the dwelling unit, but may be delayed to the date of commencement of time-share owners' occupancy rights in the dwelling unit or to a date which is not more than six months later than the date of closing of the first sale involving a right to use the dwelling unit, whichever occurs earlier in time.

### **2813.5. Dissemination of Financial and Other Information to Members.**

(a) At least the following information concerning the time-share project shall be disseminated by the governing body to all time-share owners in the project:

(1) A budget for each fiscal year consisting of at least the following information shall be distributed not less than 45 days and not more than 60 days prior to the beginning of the fiscal year to which the budget applies:

(A) Estimated revenue and expenses on an accrual basis.

(B) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies.

(C) An itemized estimate of the remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to, major components of the common areas and facilities for which the Association is responsible.

(D) A general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible.

(2) A report consisting of the following shall be distributed within 120 days after the close of the fiscal year:

(A) A balance sheet as of the end of the fiscal year.

(B) An operating (income) statement for the fiscal year.

(C) A statement of the net changes in the financial position of the project during the fiscal year.

(D) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(E) A list of the names, mailing addresses and telephone numbers of the members of the governing body of the Association.

(3) Minutes of a governing body meeting shall be distributed within 60 days after the meeting.

(4) A list of the orders of business to be considered at the annual meeting of members of the Association shall be distributed not less than 30 days prior to the meeting date. This list shall include the name, address and a brief biographical sketch if available of each member of the Association who has announced his or her intention to stand for election to the governing body.

(b) If the financial report referred to in (a)(2) above is not prepared by an independent accountant, it shall be prepared by the managing agent or by an officer of the Association and shall be accompanied by a certificate of

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

the person preparing the report that the statement was prepared from the books and records of the Association without independent audit or review.

(c) In lieu of the distribution of the budget and report required by subdivision (a), the governing body may elect to distribute a summary of the budget and report to all time-share owners along with a written notice that the budget and report is available at the business office of the Association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the Association. If any time-share owner requests that a copy of the budget and report required by subdivision (a) be mailed to the owner, the Association shall provide the copy to the time-share owner by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the time-share owners shall be in at least 10-point boldface type on the front page of the summary of the budget and report.

(d) The governing body shall annually distribute within 60 days prior to the beginning of the fiscal year a statement of the Association's policies and practices in enforcing its remedies against members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against members' interests in the project.

(e) Mailing of the information specified in (a) above may be combined where appropriate.

### **2813.6. Inspection and Copying of Association's Books and Records and Properties.**

(a) The membership register including mailing addresses and telephone numbers, books of account, minutes of members' and governing body meetings and all other records of the time-share project maintained by the Association or the managing agent shall be made available for inspection and copying by any member – or by his duly appointed representative – at any reasonable time for a purpose reasonably related to membership in the Association.

(b) The records shall be made available for inspection at the office where the records are maintained. Upon receipt of an authenticated written request from a member along with the fee prescribed by the governing body to defray the costs of reproduction, the managing agent or other custodian of records of the Association and/or the time-share project shall prepare and transmit to the member a copy of any and all records requested.

(c) The Association may, as a condition to permitting a member to inspect the membership register or to its furnishing information from the register, require that the member agree in writing not to use, or allow the use, of information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the member's interest in the Association.

(d) The governing body shall establish reasonable rules with respect to:

(1) Notice to be given to the managing agent or other custodian of the records by the member desiring to make the inspection or to obtain copies.

(2) Hours and days of the week when a personal inspection of the records may be made.

(3) Payment of the cost of reproducing copies of records requested by a member.

(e) Every governing body member shall have the absolute right at any time to inspect all books, records and documents of the Association and all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records subject only to the provisions of subdivision (c) hereof.

### **2813.7. Disciplining Owners for Violations.**

(a) The Association shall not be empowered to cause the absolute forfeiture of an owner's right, title or interest in the project on account of the owner's failure to comply with provisions of The Declaration or the rules and regulations for the project except pursuant to:

(1) The judgment of a court or the decision of an arbitrator as provided in The Declaration; or

(2) A foreclosure or sale under a power of sale for the failure of an owner to pay assessments duly levied by the Association.

(b) The Declaration may authorize the governing body of the Association, or the managing agent acting on behalf of the governing body, to suspend an owner's right to the occupancy of a dwelling unit, and all related rights and privileges as an owner of a time-share interest in the project, during the period of time that the owner is delinquent in the payment of regular or special assessments or other charges duly levied by the Association. The owner shall

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

be given written notice of the suspension of his rights and privileges immediately after the decision to suspend has been made.

(c) The Declaration may authorize the Association to impose a monetary penalty, to suspend an owner's right to use a dwelling unit or other facility that is part of the project or to take such other disciplinary action as is appropriate, short of the forfeiture of the owner's right, title and interest in the project, for violations of the provisions of The Declaration and of the rules and regulations for operation of the project by the owner, his guests or persons under his control, including, but not limited to, the following:

- (1) Failure to vacate a dwelling unit upon expiration of the owner's use period.
- (2) Damage to a dwelling unit or to any other real or personal property that is part of the project.
- (3) Permitting a time-share interest to be subject to a lien, other than the lien of non-delinquent real property taxes or assessments, claim or charge which could result in the sale of time-share interests of other owners.
- (4) Creating a disturbance that interferes with the use and enjoyment of facilities of the project by other time-share owners.

(d) Before disciplinary action authorized under subdivision (c) can be imposed by the Association, the owner against whom such action is proposed to be taken shall be given notice and the opportunity to present a written or oral defense to the charges.

- (1) The governing body of the Association shall decide whether the owner's defense shall be oral or written.
- (2) The owner shall be notified of the decision of the governing body of the Association before disciplinary action is taken.

(e) The Association may delegate to the managing agent, the power and authority to carry out disciplinary actions duly imposed by the governing body.

### **2813.8. Governing Instruments Amendments.**

(a) An amendment of a provision of The Declaration may not be enacted without the vote or written assent of at least 25 percent of the voting power of the Association residing in members other than the sponsor.

(b) An amendment of the articles of incorporation or association may not be enacted without the vote or written assent of at least 25 percent of the governing body and 25 percent of the voting power of the Association residing in members other than the sponsor.

(c) An amendment of the bylaws of the Association may not be enacted without the vote or written assent of at least 10 percent of the voting power of the Association residing in members other than the sponsor.

(d) The percentage of the voting power necessary to amend a specific clause or provision in The Declaration, articles or bylaws shall not be less than the prescribed percentage of affirmative votes or written assents required for action to be taken under that clause.

(e) In addition to the restrictions upon the enactment of amendments of the governing instruments set forth hereinabove, the governing instruments may include provisions consistent with Section 2813.1(c) whereby the vote of the sponsor must be given effect in the amendatory process.

### **2813.12. Rescission Rights.**

A person who has made an offer to purchase a time-share use or time-share estate may exercise the right of rescission granted by Section 11024 of the Code by giving written notification of the election to rescind to the sponsor at the place of business designated by the sponsor pursuant to Section 2813.13 of these Regulations.

If the notice of election is by United States mail, it shall be considered given on the date that it is postmarked. If the notice is sent by telegraph, it shall be considered as given when transmitted by telegraph from the place of origin. If notification is by means of writing sent other than by United States mail or telegraph, it shall be considered as given at the time of delivery at the place of business designated by the sponsor.

### **2813.13. Notice of Rescission Rights.**

(a) To inform a person of his or her right of rescission under Section 11024 of the Code, the sponsor shall attach to the face page of every copy of a subdivision public report given to a prospective purchaser, the notice set forth in subdivision (b) hereof printed in not less than 12-point bold face capital letters and numerals.

REGULATIONS OF THE REAL ESTATE COMMISSIONER

(b) The form and content of the notice shall be as follows:

**RESCISSION RIGHTS**

IF YOU MAKE AN OFFER TO PURCHASE A TIME-SHARE INTEREST(S) IN THE PROJECT IDENTIFIED BELOW, YOU HAVE A LEGAL RIGHT TO RESCIND (CANCEL) THIS OFFER, AND ANY CONTRACT RESULTING FROM THE ACCEPTANCE OF YOUR OFFER, AND THE RETURN OF ALL MONEY AND OTHER CONSIDERATION THAT YOU HAVE GIVEN TOWARD THE PURCHASE UNTIL MIDNIGHT OF THE THIRD CALENDAR DAY AFTER THE DAY ON WHICH YOU SIGN THE OFFER TO PURCHASE.

YOU MAY EXERCISE THIS RIGHT TO RESCIND WITHOUT GIVING ANY REASON AND WITHOUT INCURRING ANY PENALTY OR OBLIGATION BY NOTIFYING

\_\_\_\_\_  
(Name of Sponsor)

AT \_\_\_\_\_

\_\_\_\_\_  
(Address)

OF YOUR ELECTION TO RESCIND BY TELEGRAPHIC COMMUNICATION, MAIL OR OTHER WRITTEN NOTICE.

IF THE NOTICE OF RESCISSION IS SENT BY UNITED STATES MAIL, IT SHALL BE CONSIDERED GIVEN ON THE DATE THAT IT IS POSTMARKED. IF THE NOTICE IS BY TELEGRAPHIC COMMUNICATION, IT SHALL BE CONSIDERED GIVEN WHEN TRANSMITTED FROM THE PLACE OF ORIGIN. IF NOTIFICATION IS BY MEANS OF A WRITING TRANSMITTED OTHER THAN BY UNITED STATES MAIL OR TELEGRAPH, IT SHALL BE CONSIDERED GIVEN AT THE TIME OF DELIVERY AT THE ABOVE PLACE OF BUSINESS.

YOU MAY USE THIS NOTICE FOR THE PURPOSE OF RESCINDING YOUR OFFER TO PURCHASE BY COMPLETING THE BLANKS AND BY DATING AND SIGNING BELOW. THE USE OF REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED IS RECOMMENDED FOR TRANSMITTAL OF THIS NOTICE BY MAIL.

\_\_\_\_\_  
(Name of Time-Share Project)

\_\_\_\_\_  
(DRE File Number)

I HEREBY RESCIND MY OFFER OF \_\_\_\_\_  
(Date)

TO PURCHASE TIME-SHARE INTEREST \_\_\_\_\_  
(Identification Number, If Known)

IN THE ABOVE NAMED TIME-SHARE PROJECT.

\_\_\_\_\_, 19\_\_\_\_.  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

**Article 12.3. Qualified Resort Vacation Club Projects**

**2814. Applicable Regulations.**

A qualified resort vacation club is a time-share project and is subject to the regulations in this Article 12.3 and regulations in Article 12.1 and Article 12.2 except for Section 2810.1, and the following sections of Article 12 for administration of the Subdivided Lands Law: Sections 2790, 2790.1, 2791, 2791.1, 2791.2, 2791.4, 2791.6, 2792.3, 2793, 2795, 2795.1, 2795.3, 2798, 2799.1, 2801.5 and 2804.

**2815. Authority of Commissioner to Vary Requirements.**

Notwithstanding Section 2814 and as authorized by Section 10263(b) of the Business and Professions Code, the commissioner may vary some of the requirements of the following regulations: Sections 2798, 2806, 2810,

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

2810.3, 2810.7, 2811, 2812.1, 2812.5, 2812.7, 2812.8, 2812.9, 2812.10, 2812.11, 2813, 2813.1, 2813.2, 2813.3, 2813.4, 2813.5 and 2813.8.

### **2817. Prospective Purchaser Disclosure Form.**

(a) To inform a prospective purchaser of an interest in a qualified resort vacation club of the requirements under Section 10260(e), the notice set forth in subdivision (b) hereof printed in not less than 12-point bold-face capital letters and numerals shall be contained in and immediately follow the face page of every subdivision permit issued for a qualified resort vacation club.

(b) The form and the content of the notice shall be as follows:

#### **NOTICE**

**IF YOU DECIDE TO PURCHASE AN INTEREST IN THIS QUALIFIED RESORT VACATION CLUB YOU SHOULD BASE YOUR PURCHASE ON THE VALUE OF THE INTEREST AS A VACATION OR LEISURE TIME EXPERIENCE AND NOT AS AN APPRECIATING INVESTMENT OR ON AN EXPECTATION OF RESALE. BEFORE CONTRACTING TO PURCHASE YOU SHOULD CONSIDER THE FOLLOWING:**

- 1. A QUALIFIED RESORT VACATION CLUB PROJECT IS AN OFFERING OF TIME SHARES.**
- 2. AS A GENERAL RULE, A SIGNIFICANT PORTION OF THE PURCHASE PRICE OF AN INTEREST IN A TIME-SHARE PROJECT REPRESENTS THE DEVELOPER'S PROMOTIONAL AND MARKETING COSTS.**
- 3. INDIVIDUAL RESALE OF TIME-SHARE INTERESTS HAVE PROVEN TO BE DIFFICULT FOR OWNERS PRIMARILY BECAUSE TIME-SHARE OWNERS HAVE TO COMPETE WITH HIGHLY SOPHISTICATED SALES PROMOTIONS OF THE DEVELOPER.**
- 4. BECAUSE THE ORIGINAL PURCHASE PRICE REPRESENTS A SIGNIFICANT PART OF THE DEVELOPER'S MARKETING COSTS, A TIME-SHARE OWNER MAY RECOUP ONLY A PORTION OF THE PURCHASE PRICE IF A RESALE BUYER CAN BE FOUND.**
- 5. SINCE MOST TIME-SHARE OWNERS RESIDE SOME DISTANCE FROM THE RESORT OR RESORTS INCLUDED IN THE OFFERING, IT IS USUALLY INCONVENIENT FOR SUCH OWNERS TO SHOW THE DWELLING UNITS TO PROSPECTIVE RESALE BUYERS AND USUALLY THIS CAN ONLY BE DONE DURING THE PERIODS OF USE.**
- 6. LICENSED REAL ESTATE AGENTS HAVE NOT ENTERED INTO THE TIME-SHARE RESALE MARKET IN GREAT NUMBERS, AND THOSE WHO HAVE OFTEN CHARGE A COMMISSION THAT SIGNIFICANTLY EXCEEDS THE NORMAL COMMISSION FOR SALE OF A SINGLE-FAMILY DWELLING.**

### **Article 13. Environmental Impact Evaluation**

#### **2821. Local Agency as Lead Agency.**

The "local agency" which grants "approval" of a tentative or parcel map or issues other entitlement pursuant to provisions of the Subdivision Map Act, and local ordinances for implementation thereof, is the "lead agency" for subdivision projects for which the Department issues a final or preliminary public report.

#### **2822. Submission of Environmental Documentation.**

An applicant for a public report for a subdivision project for which environmental documentation has been prepared and adopted by a "lead agency" shall submit a copy of the environmental documentation with the notice of intention and questionnaire filed with the Department pursuant to Sections 11010 and 11011 of the Subdivided Lands Law.

### **Article 15. Trust Fund Accounts**

#### **2830.1. Interest-Bearing Trust Account.**

A real estate broker, when acting as agent for a financial institution as beneficiary of a loan, may deposit and maintain funds from or for the account of an obligor for the future payment of property taxes, assessments or insurance relating to real property containing only a one-to-four family residence, in an interest-bearing trust account in a bank or savings and loan association in order to pay interest to the obligor in accordance with Section 2954.8 of the Civil Code if the following requirements are met:

(a) The account is in the name of the broker as trustee.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (b) All of the funds in the account are covered by insurance provided by an agency of the federal government.
- (c) All of the funds in the account are funds held in trust by the broker for others.
- (d) The broker discloses to the obligor how interest will be calculated and paid.
- (e) No interest earned on the funds shall inure directly or indirectly to the benefit of the broker nor to any person licensed to the broker.

### **2831. Trust Fund Records To Be Maintained.**

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
- (2) From whom trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Department or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

### **2831.1. Separate Record for Each Beneficiary or Transaction.**

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

### **2831.2. Trust Account Reconciliation.**

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

### **2832. Trust Fund Handling.**

(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

(c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(d) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

(e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson.

### **2832.1. Trust Fund Handling for Multiple Beneficiaries.**

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

### **2834. Trust Account Withdrawals.**

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) a salesperson licensed to the broker.

(2) a person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

- (1) an officer through whom the corporation is licensed pursuant to Section 10158 or 10211 of the Code; or
- (2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

### **2835. Commingling.**

"Commingling" as used in Section 10176(e) of the Code is prohibited except as specified in this section. For purposes of Section 10176(e), the following shall not constitute "commingling":

(a) The deposit into a trust account of reasonably sufficient funds, not to exceed \$200, to pay service charges or fees levied or assessed against the account by the bank or financial institution where the account is maintained.

(b) The deposit into a trust account maintained in compliance with subdivision (d) of funds belonging in part to the broker's principal and in part to the broker when it is not reasonably practicable to separate such funds, provided the part of the funds belonging to the broker is disbursed not later than twenty-five days after their deposit and there is no dispute between the broker and the broker's principal as to the broker's portion of the funds. When the right of a broker to receive a portion of trust funds is disputed by the broker's principal, the disputed portion shall not be withdrawn until the dispute is finally settled.

(c) The deposit into a trust account of broker owned funds in connection with activities pursuant to either subdivision (d) or (e) of Section 10131 of the Code or when making, collecting payments or servicing a loan which is subject to the provisions of Section 10240 of the Code provided:

- (1) The broker meets the criteria of Section 10232 of the Code.
- (2) All funds in the account which are owned by the broker are identified at all times in a separate record which is distinct from any separate record maintained for a beneficiary.
- (3) All broker owned funds deposited into the account are disbursed from the account not later than 25 days after their deposit.
- (4) The funds are deposited and maintained in compliance with subdivision (d).
- (5) For the purpose of this section, a broker shall be deemed to be subject to the provisions of Section 10240 of the Code if the broker delivers the statement to the borrower required by Section 10240.

(d) The trust fund account into which the funds are deposited is maintained in accordance with the provisions of Section 10145 and the regulations of this article, and in accordance with the provisions of Title 10, California Code of Regulations, Section 260.105.30.

## **Article 16. Mortgage Loan Brokerage**

**(Editor's Note:** The forms indicated in Regulations 2840 and 2840.1 are available from the Department of Real Estate as RE Forms 882 and 883, respectively.)

### **2840. Approved Borrower Disclosure Statement.**

(a) The commissioner approves the use of the following form and the form contained in section 2840.1 of these regulations for the statement required by Section 10241 of the Business and Professions Code.

#### **MORTGAGE LOAN DISCLOSURE STATEMENT (BORROWER)**

---

(Name of Broker)

---

(Business Address)



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### I. SUMMARY OF LOAN TERMS

- A. PRINCIPAL AMOUNT \$ \_\_\_\_\_
- B. ESTIMATED DEDUCTIONS FROM PRINCIPAL AMOUNT
1. Costs and Expenses (See Paragraph III-A) \$ \_\_\_\_\_
- \*2. Broker Commission/Origination Fee (See Paragraph III-B) \$ \_\_\_\_\_
3. Lender Origination Fee/Discounts (See Paragraph III-B) \$ \_\_\_\_\_
4. Additional compensation will/may be received from lender not deducted from loan proceeds.  
\_\_\_\_ YES \$ \_\_\_\_\_ (if known) \_\_\_\_ NO
5. Amount to be Paid on Authorization of Borrower (See Paragraph III-C) \$ \_\_\_\_\_
- C. ESTIMATED CASH PAYABLE TO BORROWER (A LESS B) \$ \_\_\_\_\_

### II. GENERAL INFORMATION ABOUT LOAN

- A. If this loan is made, borrower will be required to pay the principal and interest at \_\_\_\_% per year, payable as follows: \_\_\_\_ (number of payments) \_\_\_\_ (monthly, quarterly, annual) payments of \$ \_\_\_\_\_ and a FINAL/BALLOON payment of \$ \_\_\_\_\_ to pay off the loan in full.

**NOTICE TO BORROWER:** IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN IT COMES DUE, YOU MAY HAVE TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY TO MAKE THE BALLOON PAYMENT. IN THAT CASE, YOU MAY AGAIN HAVE TO PAY COMMISSIONS, FEES AND EXPENSES FOR THE ARRANGING OF THE NEW LOAN. IN ADDITION, IF YOU ARE UNABLE TO MAKE THE MONTHLY PAYMENTS OR THE BALLOON PAYMENT, YOU MAY LOSE THE PROPERTY AND ALL OF YOUR EQUITY THROUGH FORECLOSURE. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THIS LOAN.

- B. This loan will be evidenced by a promissory note and secured by a deed of trust on property identified as (street address or legal description):

\_\_\_\_\_  
\_\_\_\_\_

- C. 1. Liens presently against this property (do not include loan being applied for):

Nature of Lien	Priority	Lienholder's Name	Amount Owing
----------------	----------	-------------------	--------------

_____	_____	_____	_____
_____	_____	_____	_____

2. Liens that will remain against this property after the loan being applied for is made or arranged (include loan being applied for):

Nature of Lien	Priority	Lienholder's Name	Amount Owing
----------------	----------	-------------------	--------------

_____	_____	_____	_____
_____	_____	_____	_____

**NOTICE TO BORROWER:** Be sure that you state the amount of all liens as accurately as possible. If you contract with the broker to arrange this loan, but it cannot be arranged because you did not state these liens correctly, you may be liable to pay commissions, fees and expenses even though you do not obtain the loan.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- D. If borrower pays all or part of the loan principal before it is due, a PREPAYMENT PENALTY computed as follows may be charged:

---

---

---

- E. Late Charges: \_\_\_\_ YES, see loan documents \_\_\_\_ NO

- F. The purchase of credit life and/or credit disability insurance by a borrower is not required as a condition of making this loan.

### III. DEDUCTIONS FROM LOAN PROCEEDS

- A. Estimated Maximum Costs and Expenses of Arranging the Loan to be Paid Out of Loan Principal  
PAYABLE TO

	<u>Broker</u>	<u>Others</u>
1. Appraisal Fee	_____	_____
2. Escrow Fee	_____	_____
3. Title insurance policy	_____	_____
4. Notary fees	_____	_____
5. Recording fees	_____	_____
6. Credit investigation fees	_____	_____
7. Other costs and expenses:		
_____	_____	_____
_____	_____	_____
Total Costs and Expenses	\$ _____	

\*B. Compensation

- |   |          |
|---|----------|
| 1. Brokerage Commission/Origination Fee | \$ _____ |
| 2. Lender Origination Fee/Discounts     | \$ _____ |

- C. Estimated Payment to be Made out of Loan Principal on Authorization of Borrower  
PAYABLE TO

	<u>Broker</u>	<u>Others</u>
1. Fire or other hazard insurance premiums	_____	_____
2. Credit life or disability insurance premiums (See Paragraph II-E)	_____	_____
3. Beneficiary statement fees	_____	_____
4. Reconveyance and similar fees	_____	_____
5. Discharge of existing liens against property	_____	_____
_____	_____	_____
_____	_____	_____
6. Other:		
_____	_____	_____
Total to Be Paid on Authorization of Borrower	\$ _____	

If this loan is secured by a first deed of trust on dwellings in a principal amount of less than \$30,000 or secured by a junior lien on dwellings in a principal amount of less than \$20,000, the undersigned licensee certifies that the loan will be made in compliance with Article 7 of Chapter 3 of the Real Estate Law.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

\* This loan may/will/will not (*delete two*) be made wholly or in part from broker-controlled funds as defined in Section 10241(j) of the Business and Professions Code.

\* **NOTICE TO BORROWER:** This disclosure statement may be used if the broker is acting as an agent in arranging the loan by a third person or if the loan will be made with funds owned or controlled by the broker. If the broker indicates in the above statement that the loan "may" be made out of broker-controlled funds, the broker must notify the borrower prior to the close of escrow if the funds to be received by the borrower are in fact broker-controlled funds.

\_\_\_\_\_  
(Name of Broker)

\_\_\_\_\_  
(Broker Representative)

\_\_\_\_\_  
(License Number)

\_\_\_\_\_  
(License Number)

\_\_\_\_\_  
(Signature of Broker)

OR

\_\_\_\_\_  
(Signature)

### NOTICE TO BORROWER

DO NOT SIGN THIS STATEMENT UNTIL YOU HAVE READ AND UNDERSTAND ALL OF THE INFORMATION IN IT. ALL PARTS OF THE FORM MUST BE COMPLETED BEFORE YOU SIGN.

Borrower hereby acknowledges the receipt of a copy of this statement.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

### BROKER REVIEW

Signature of real estate broker after review of this statement.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Real Estate Broker or assistant pursuant to Section 2725

(b) The type size used in reproducing the statement shown above shall not be smaller than 10-point type. The notice to the borrower contained in section II.A. of the statement shall be in capitalized 10-point bold typeface.

(c) Except as provided in subdivision (d), a real estate broker shall obtain the written approval of the commissioner for the use of a form that differs in format or suggested content from that approved by the commissioner pursuant to subdivision (a) or Section 2840.1 (a) of these regulations.

(d) The approval of the commissioner shall not be required for any of the following deviations or variations from the official form referred to in subdivision (a).

(1) Addition of a paragraph which reads essentially as follows:

"The real property which will secure the requested loan is an 'owner-occupied dwelling' YES\_\_\_\_ NO\_\_\_\_  
(Borrower initial opposite YES or NO)

An 'owner-occupied dwelling' means in a single dwelling unit in a condominium or cooperative or residential building of four or less separate dwelling units, one of which will be owned and occupied by a signatory to the mortgage or deed of trust for this loan within 90 days of the signing of the mortgage or deed of trust."

(2) If the repayment terms of the loan do not call for the payment of any installment (balloon payment) which is greater than twice the amount of the smallest repayment installment, all references to "balloon payment" may be struck over or eliminated from the disclosure statement.

(3) If at the time of preparing the disclosure statement, the broker or his representative knows whether the broker will be acting as an agent in negotiating the loan by a third person or will be funding the loan out of broker-controlled funds, the broker or his representative may strikeover or delete those provisions and terms in the approved form which are inconsistent with the broker's role in the transaction. For example, if the broker knows

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

that he or she will be the lender in the transaction, references in the approved form to "commissions" should be deleted.

### 2840.1. Alternative Approved Borrower Disclosure Statement.

(a) The commissioner approves the use of the following form and the form contained in section 2840 of these regulations for the statement required by Section 10241 of the Business and Professions Code.

#### MORTGAGE LOAN DISCLOSURE STATEMENT/GOOD FAITH ESTIMATE

Borrower's Name(s): \_\_\_\_\_

Real Property Collateral: The intended security for this proposed loan will be a Deed of Trust on (street address or legal description) \_\_\_\_\_

This joint Mortgage Loan Disclosure Statement/Good Faith Estimate is being provided by \_\_\_\_\_, a real estate broker acting as a mortgage broker, pursuant to the Federal Real Estate Settlement Procedures Act (RESPA) and similar California law. In a transaction subject to RESPA, a lender will provide you with an additional Good Faith Estimate within three business days of the receipt of your loan application. You will also be informed of material changes before settlement/close of escrow. The name of the intended lender to whom your loan application will be delivered is:

\_\_\_ Unknown

\_\_\_ \_\_\_\_\_ (Name of lender, if known)

#### GOOD FAITH ESTIMATE OF CLOSING COSTS

The information provided below reflects estimates of the charges you are likely to incur at the settlement of your loan. The fees, commissions, costs and expenses listed are estimates; the actual charges may be more or less. Your transaction may not involve a charge for every item listed and any additional items charged will be listed. The numbers listed beside the estimate generally correspond to the numbered lines contained in the HUD-1 Settlement Statement which you will receive at settlement if this transaction is subject to RESPA. The HUD-1 Settlement Statement contains the actual costs for the items paid at settlement. When this transaction is subject to RESPA, by signing page two of this form you are also acknowledging receipt of the HUD Guide to Settlement Costs.

HUD-1	Item	Paid to Others	Paid to Broker
<b>800</b>	<b><i>Items Payable in Connection with Loan</i></b>		
801	Lender's Loan Origination Fee	\$ _____	\$ _____
802	Lender's Loan Discount Fee	\$ _____	\$ _____
803	Appraisal Fee	\$ _____	\$ _____
804	Credit Report	\$ _____	\$ _____
805	Lender's Inspection Fee	\$ _____	\$ _____
808	Mortgage Broker Commission/Fee	\$ _____	\$ _____
809	Tax Service Fee	\$ _____	\$ _____
810	Processing Fee	\$ _____	\$ _____
811	Underwriting Fee	\$ _____	\$ _____
812	Wire Transfer Fee	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
<b>900</b>	<b><i>Items Required by Lender to be Paid in Advance</i></b>		
901	Interest for ___ days at \$_____ per day	\$ _____	\$ _____
902	Mortgage Insurance Premiums	\$ _____	\$ _____
903	Hazard Insurance Premiums	\$ _____	\$ _____

# REGULATIONS OF THE REAL ESTATE COMMISSIONER

HUD-1	Item	Paid to Others	Paid to Broker
904	County Property Taxes	\$ _____	\$ _____
905	VA Funding Fee	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
<b>1000</b>	<b><i>Reserves Deposited with Lender</i></b>		
1001	Hazard Insurance: _____ months at \$ _____/mo.	\$ _____	\$ _____
1002	Mortgage Insurance: _____ months at \$ _____/mo.	\$ _____	\$ _____
1004	Co. Property Taxes: _____ months at \$ _____/mo.	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
<b>1100</b>	<b><i>Title Charges</i></b>		
1101	Settlement or Closing/Escrow Fee	\$ _____	\$ _____
1105	Document Preparation Fee	\$ _____	\$ _____
1106	Notary Fee	\$ _____	\$ _____
1108	Title Insurance	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
<b>1200</b>	<b><i>Government Recording and Transfer Charges</i></b>		
1201	Recording Fees	\$ _____	\$ _____
1202	City/County Tax/Stamps	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
<b>1300</b>	<b><i>Additional Settlement Charges</i></b>		
1302	Pest Inspection	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
<b>Subtotals of Initial Fees, Commissions, Costs and Expenses</b>		\$ _____	\$ _____
<b>Total of Initial Fees, Commissions, Costs and Expenses</b>			\$ _____
<b>Compensation to Broker (Not Paid Out of Loan Proceeds):</b>			
Mortgage Broker Commission/Fee			\$ _____
Any Additional Compensation from Lender ___ No ___ Yes			\$ _____ (if known)

Page 1 of 2

## ADDITIONAL REQUIRED CALIFORNIA DISCLOSURES

I. Proposed Loan Amount: \$ \_\_\_\_\_

Initial Commissions, Fees, Costs and Expenses Summarized on  
Page 1: \$ \_\_\_\_\_

Payment of Other Obligations (List):

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

Credit Life and/or Disability Insurance (see VI below) \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

**Subtotal of All Deductions:** \$ \_\_\_\_\_

**Estimated Cash at Closing** \_\_\_\_\_ **To You** \_\_\_\_\_ **That you must pay \$** \_\_\_\_\_

II. Proposed Interest Rate: \_\_\_\_\_ % \_\_\_\_\_ Fixed Rate \_\_\_\_\_ Initial Variable Rate

III. Proposed Loan Term: \_\_\_\_\_ Years \_\_\_\_\_ Months

IV. Proposed Loan Payments: Payments of \$ \_\_\_\_\_ will be made \_\_\_\_\_ Monthly \_\_\_\_\_ Quarterly \_\_\_\_\_ Annually for \_\_\_\_\_ (number of months, quarters or years).

If proposed loan is a variable interest rate loan, this payment will vary (see loan documents for details).

The loan is subject to a balloon payment: \_\_\_\_\_ No \_\_\_\_\_ Yes. If Yes, the following paragraph applies and a final balloon payment of \$ \_\_\_\_\_ will be due on \_\_\_\_/\_\_\_\_/\_\_\_\_ [estimated date (day/month/year)].

**NOTICE TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN IT COMES DUE, YOU MAY HAVE TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY TO MAKE THE BALLOON PAYMENT. IN THAT CASE, YOU MAY AGAIN HAVE TO PAY COMMISSIONS, FEES, AND EXPENSES FOR THE ARRANGING OF THE NEW LOAN. IN ADDITION, IF YOU ARE UNABLE TO MAKE THE MONTHLY PAYMENTS OR THE BALLOON PAYMENT, YOU MAY LOSE THE PROPERTY AND ALL OF YOUR EQUITY THROUGH FORECLOSURE. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THIS LOAN.**

V. Prepayments: The proposed loan has the following prepayment provisions.

\_\_\_\_\_ No prepayment penalty.

\_\_\_\_\_ Other (see loan documents for details).

\_\_\_\_\_ Any payment of principal in any calendar year in excess of 20% of the \_\_\_\_\_ original balance \_\_\_\_\_ unpaid balance will include a penalty not to exceed \_\_\_\_\_ months advance interest at the note rate, but not more than the interest that would be charged if the loan were paid to maturity (see loan documents for details).

VI. Credit Life and/or Disability Insurance: The purchase of credit life and/or disability insurance by a borrower is NOT required as a condition of making this proposed loan.

VII. Other Liens: Are there liens currently on this property for which the borrower is obligated? \_\_\_\_\_ No \_\_\_\_\_ Yes If Yes, describe below:

Lienholder's Name	Amount Owed	Priority
-------------------	-------------	----------

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Liens that will remain or are anticipated on this property after the proposed loan for which you are applying is made or arranged (including the proposed loan for which you are applying):

Lienholder's Name	Amount Owed	Priority
-------------------	-------------	----------

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NOTICE TO BORROWER:** Be sure that you state the amount of all liens as accurately as possible. If you contract with the broker to arrange this loan, but it cannot be arranged because you did not state these liens correctly, you may be liable to pay commissions, costs, fees, and expenses even though you do not obtain the loan.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

VIII. Article 7 Compliance: If this proposed loan is secured by a first deed of trust in a principal amount of less than \$30,000 or secured by a junior lien in a principal amount of less than \$20,000, the undersigned licensee certifies that the loan will be made in compliance with Article 7 of Chapter 3 of the Real Estate Law.

A. This loan \_\_\_ may \_\_\_ will \_\_\_ will not be made wholly or in part from broker-controlled funds as defined in Section 10241(j) of the Business and Professions Code.

B. If the broker indicates in the above statement that the loan "may" be made out of broker-controlled funds, the broker must inform the borrower prior to the close of escrow if the funds to be received by the borrower are in fact broker-controlled funds.

\_\_\_\_\_  
Name of Broker      License #

\_\_\_\_\_  
Broker Representative      License #

\_\_\_\_\_  
Broker's Address

\_\_\_\_\_  
Signature of Broker      Date

OR

\_\_\_\_\_  
Signature of Representative      Date

IX. NOTICE TO BORROWER: THIS IS NOT A LOAN COMMITMENT. Do not sign this statement until you have read and understood all of the information in it. All parts of this form must be completed before you sign. Borrower hereby acknowledges the receipt of a copy of this statement.

\_\_\_\_\_  
Borrower      Date

\_\_\_\_\_  
Borrower      Date

Review completed on \_\_\_\_\_  
Date

by

\_\_\_\_\_  
Broker or Designated Representative

\_\_\_\_\_  
Dept. of Real Estate Licensee #

Page 2 of 2

(b) The notice to the borrower contained in section IV. of the statement shall be in capitalized 10-point bold typeface.

(c) The form shown in subsection (a) above shall consist of 2 pages measuring 8 1/2 x 14 inches each. The first page shall conclude after the line "Any Additional Compensation from Lender \_\_\_ No \_\_\_ Yes \$\_\_\_\_\_ (if known)" with the following language "Page 1 of 2". The second page shall begin with the line "**ADDITIONAL REQUIRED CALIFORNIA DISCLOSURES**" and shall conclude with the following language "Page 2 of 2".

(d) The type size used in reproducing the form shown in subsection (a) above shall not be smaller than 10-point type.

### 2841. Mortgage Loan Negotiation.

(a) The term "negotiation" as used in Section 10133.1(c) of the Code does not include any of the limited activities described as follows when done by an employee of a real estate broker under the control, direction and supervision of the broker:

(1) Preparing and designing advertising relating to loan transactions for broker review and written approval prior to its distribution, circulation, use or publication.

(2) Distributing, circulating, using or publishing preprinted brochures, flyers, fact sheets or other written materials relating to loans secured by real property which the broker can make or negotiate and which have been reviewed and approved in writing by the broker prior to their being distributed, circulated or published. Materials subject to this subdivision may not contain the name, address or telephone number of the nonlicensed employee.

(3) Providing written factual information about loan terms, conditions or qualification requirements to a prospective borrower that has been either prepared by the broker, or reviewed and approved in writing by the

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

broker. A nonlicensed employee may discuss such information with a prospective borrower in general terms, but may not provide counseling or advice to a prospective borrower.

(4) Notifying a prospective borrower of the information needed in order to complete a loan application without providing counseling or advice to a prospective borrower.

(5) Entering information provided by the prospective borrower on a pre-printed application form without providing counseling or advice to a prospective borrower.

(6) Entering information provided by a prospective borrower or third party into a preformatted computer database.

(7) Accepting and providing a receipt on behalf of a broker for funds received from a prospective borrower for credit or appraisal fees.

(8) Preparing and mailing requests for verification of employment, verification of deposits, credit reports or appraisal reports. Obtaining such reports for transmission to the broker.

(9) Assembling, under the direction of the broker, materials obtained in the course of a loan transaction for submission to a prospective lender or loan committee, providing the final determination as to completeness or compliance is made by the broker.

(10) Communicating with a service provider in connection with a loan transaction to determine when reports or other information needed concerning any aspect of the transaction will be delivered, or when certain services will be performed or completed.

(11) Mailing, delivering, picking up, or arranging the mailing, delivery, or picking up of documents or instruments related to the loan transaction, including obtaining signatures to the documents or instruments from principals, parties or service providers in connection with the loan transaction, as long as the nonlicensed employee does not interpret or explain the content, relevance, significance or effect of the document or signature and such documents or instruments have been reviewed and approved in writing by the broker.

(12) Contacting a prospective lender to determine the status of a loan application.

(13) Responding to an inquiry or notifying a prospective borrower or his or her agent of the status of the loan application as long as the nonlicensed employee does not interpret or explain the relevance, significance or effect of that status. A nonlicensed employee may communicate omissions to a party or principal to the loan as long as the nonlicensed employee does not interpret or explain the relevance or significance of those omissions.

(14) Preparing and completing documents and instruments under the supervision and direction of the broker if the final documents or instruments will be or have been reviewed and approved in writing by the broker.

(15) Arranging or making appointments for third party service providers to enter the real property securing the loan, or arranging or making appointments for the prospective borrower or lender to meet with the broker, lender or other party or service provider in connection with the loan.

(b) As used in this section the terms "loan" or "loan transaction" mean a loan secured directly or collaterally by a lien on real property which is a residential mortgage loan transaction, as defined in Section 50003 of the Financial Code and where the lender is an institutional lender, as defined in Section 50003 of the Financial Code. Other than the acts specifically authorized by this Section, at no time may the nonlicensed employee perform any acts for which a real estate license is required within the meaning of Section 10131(d) of the Business and Professions Code.

(c) As used in this Section and in Section 10133.1(c) of the Code the term "employee" means a person in the service of a broker under any appointment or contract of hire, express or implied, oral or written and for whom the broker is obligated to withhold income tax payments and provide workers compensation insurance and unemployment insurance.

(d) As used in this Section, the term "written approval" shall consist of the broker's signature or initials affixed by the broker to a copy of the instrument being approved along with the date of the approval. The broker shall retain a copy of the approval for a period of three years from the date the approval was made. A broker may delegate to a broker or salesperson employed by the broker the authority to provide written approval so long as the broker does not relinquish overall responsibility for supervision of nonlicensed persons acting under this Section.



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **2842.5. Signing Mortgage Loan Disclosure Statement.**

For purposes of Section 10240 of the Code a loan application shall be considered complete when the licensee receives or has prepared a written application on an application form or forms normally used by the lender for a Federally Related Mortgage Loan, and as to non-federally related mortgage loans, when the licensee receives or has prepared a written application on an application form or forms normally used by a lender or the licensee.

### **2843. Restrictions on Chargeable Costs and Expenses.**

No "costs and expenses of making the loan" referred to in Section 10241 (a) which have not been paid, incurred or reasonably earned by the broker shall be charged to the borrower. No fee may be charged to a borrower as part of the costs and expenses of making the loan which exceeds the fee customarily charged for the same or comparable service in the community where the service was rendered.

If the escrow depository for a loan transaction is a licensed escrow agent, a title insurance company, a bank or trust company or a savings and loan association, and a fee is charged to the borrower by the escrow depository for the escrow function, no additional fee may be charged by the broker, a salesperson licensed to the broker or any entity controlled by the broker for services related to the conduct of an escrow.

### **2845. Interpretive Opinion Request.**

(a) A request for an interpretive opinion pursuant to Section 10236 of the Code shall be addressed to the Headquarters Office of the Department to the attention of Chief Counsel.

(b) An interpretive opinion request shall satisfy each of the following conditions:

(1) The request shall clearly state that it is a request for an interpretive opinion pursuant to Section 10236 of the Code.

(2) The request shall be addressed to a specific transaction or transactions or to a narrowly-defined course of conduct or business practice. The persons or entities on whose behalf the request is made shall be identified. If the persons or entities cannot be identified by name at the time of the request, they must be identified by their capacities in the transaction, course of conduct, or business practice. If the person requesting the opinion knows of persons other than those on whose behalf the request is made who intend to engage in a transaction, course of conduct, or business practice in reliance upon the opinion, such information shall also be included in the request for opinion.

(3) The nature of the transaction, course of conduct, or business practice, the capacities of parties to the transaction, and relevant details about it shall be described. Instruments, or other documents that will be used in the transaction, course of conduct, or business practice, completed in illustrative form to explain the transaction, course of conduct, or business practice, shall be appended to the request.

(4) The question or questions central to the opinion request shall be specifically and narrowly framed.

(c) Attorneys at law seeking interpretive opinions on behalf of clients shall include with the opinion requests, their own analyses of the issues presented by the request, their views with respect to the issues presented and citations of legal authority in support of those views.

### **2846. Approved Lender/Purchaser Disclosure Statement.**

(a) The commissioner shall publish and make available to interested persons as an official form of the Department of Real Estate, an approved format and content for the disclosure statements referred to in subdivisions (a) and (b) of Section 10232.5 of the Code.

(b) The publication of a form pursuant to subdivision (a) hereof is for the purpose of aiding real estate licensees in providing information of significance to prospective lenders and purchasers of promissory notes secured by real property and real property sales contracts in a uniform and effective manner. The form shall not constitute the only format or prescribed content that will satisfy the requirements of Section 10232.5 of the Code. The commissioner will entertain requests for approval of a proposed disclosure statement not in conformance with the form published pursuant to subdivision (a) only from persons who have established to the satisfaction of the commissioner that the request for approval is made on behalf of 25 or more real estate brokers who are subject to subdivision (e) of Section 10232 of the Code.

### **2846.1. Material Change – Multi-Lender Loans**

A material change requiring an amended notice under Section 10229(a) of the Code shall include but shall not be limited to the following:

(a) A change of the month in which the broker's fiscal year ends.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(b) A change with respect to whether the broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229 of the Code.

(c) A change with respect to the identity of the Servicing Agent.

### **2846.5. Report of Annual Trust Fund Accounts Review.**

(a) The annual report of a review of trust fund financial statements required under subdivision (a) of Section 10232.2 of the Code shall include confirmation by an independent public accountant that:

(1) The broker maintains those records specified in Sections 2831 and 2831.1 of these regulations, and reconciles such records in accordance with Section 2831.2 of these regulations.

(2) Each trust fund bank account is maintained by the broker in compliance with Sections 2832 and 2834 of these regulations.

(3) The accountant has reviewed the accompanying balance sheet of trust funds held by the broker as of the last day of the fiscal year, and the accompanying statement of receipts and disbursements of trust funds and changes in cash for the fiscal year, in accordance with standards established by the American Institute of Certified Public Accountants.

(4) The accountant is not aware of any material modifications that should be made to the trust fund financial statements in order for them to be in conformity with generally accepted accounting principles.

(5) The adjusted balance(s) of the bank trust account(s) maintained by the broker as shown in the accompanying financial statements were on deposit as of the financial statements date.

(6) The trust fund bank account balance(s) and receipts and disbursements shown on the financial statements agreed with the amounts reflected on the cash records specified in Section 2831 of these regulations.

(7) The trust fund liability balance for each open account as itemized in the financial statements agreed with the amount reflected on the separate beneficiary records specified in Section 2831.1 of these regulations.

(b) In preparing the report referred to in subdivision (a), the accountant may incorporate qualifying representations or disclaimers substantially as follows:

(1) All information included in the financial statements examined by the accountant are representations of the broker or of responsible officers of the broker.

(2) The review by the accountant consisted principally of inquiries of company personnel and analytical procedures applied to financial data. It was substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. The report therefore includes no such opinion.

(c) In lieu of complying with subdivision (a) above, a broker may satisfy subdivision (a) of Section 10232.2 of the Code by submitting the report by a California independent public accountant of an audit of the trust fund financial statements of the broker in which the accountant expresses an unqualified opinion that the financial statements fairly present, in conformity with generally accepted accounting principles, (1) the trust fund position of the broker at the end of the fiscal year and (2) a compilation of receipts and disbursements of trust funds for the fiscal year.

(d) The annual report of a review of trust fund financial statements shall include the following financial statements:

(1) Balance sheet of trust funds held by the broker as of the last day of the fiscal year. Each of the trust fund bank accounts shall be identified, either in the balance sheet or in the notes thereto, by name of bank and account number.

(2) Statement of receipts and disbursements of trust funds and changes in cash for the fiscal year.

(3) Schedule of trust fund liability balances showing each open beneficiary account in connection with trust funds received in carrying on the activities described in subdivisions (d) and (e) of Section 10131 of the Code.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **2846.7. Delayed Filing of Trust Account Report.**

(a) A real estate broker whose fiscal year ends between the last day of November and the last day of February inclusive shall regularly have until the following May 31 in which to file the report required by subdivision (a) of Section 10232.2 or subdivision (n) of Section 10229 of the Code.

(b) A real estate broker whose fiscal year ends between March 1 and November 29 inclusive shall file the report required by subdivision (a) of Section 10232.2 or subdivision (n) of Section 10229 of the Code not later than 90 days after the end of the fiscal year unless the broker shall have previously obtained written authorization from the Department to file the report more than 90 days after the end of the fiscal year.

### **2846.8. Quarterly Trust Fund Status Report.**

(a) The Commissioner shall publish and make available to interested persons as an official form of the Department, an approved format and content for the Trust Fund Status Report described in Section 10232.25 of the Code.

(b) The publication of a form pursuant to subdivision (a) is for the purpose of aiding real estate licensees in complying with Section 10232.25 of the code. The form prescribed by the Commissioner shall not constitute the only format or content that will satisfy the requirements of Section 10232.25.

### **2847. Voluntary Submission of Proposed Advertising.**

(a) A real estate broker may submit for departmental approval advertising proposed to be used in connection with the performance of acts for which a real estate license is required pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131 of the Code.

(b) Proposed advertising copy shall be submitted to the Sacramento office of the Department. Written or graphic advertising shall be submitted in the format in which it will be displayed to the public. A written script shall be submitted for radio or television advertisements. A submission of advertisement to the Department shall be accompanied by the maximum fee set forth in Section 10232.1 of the Code.

### **2847.3. Disclosure of License and Issuing Department**

(a) Use of either of the following statements shall satisfy the requirements of Sections 10235.5 and 17539.4 of the Code:

- (1) Real estate broker, California Department of Real Estate.
- (2) California Department of Real Estate, real estate broker.

The words "California" and "Department" may be abbreviated only as "CA" or "CAL" or "Calif" and "Dept". A dash (-) may be used in lieu of the comma appearing in the statements set forth above in paragraphs (1) and (2).

(b) The type size of the statement shall be no less than the smallest size type used in the advertisement copy.

(c) Use of either statement as set forth in subdivision (a) will also satisfy the designation requirements of Section 10140.6 of the Code.

### **2848. Advertising Criteria.**

In administering Sections 10232.1, 10235, and 10237.7 of the Code, the commissioner shall take such action as is appropriate to prevent or halt the publication of advertising that is false, misleading or deceptive in itself or through the omission of information necessary to make a representation not misleading in the context in which it is used. To this end, the commissioner may disapprove or require verification of representations in advertising submitted pursuant to Section 10232.1 or 10237.7 of the Code, or Section 2847 of these regulations.

In addition to the actual text, consideration shall be given to such factors as format, pictorial display and emphasis in determining whether an advertisement is likely to create a false impression.

By way of illustration and not of limitation, advertising containing any of the following is considered to be false, misleading or deceptive and will not ordinarily be approved for publication by the commissioner:

- (1) The use of "guaranteed", "insured", "bonded", "sure", "safe", "sound" or other words or phrases of similar import to describe or characterize the security of lenders' or purchasers' funds, or the return to lenders or purchasers from the use of their funds, without an accompanying statement of fact supporting the use of the words or phrases implying high security. A representation to the effect that no losses or minimal losses have been sustained by lenders or purchasers doing business with the licensee shall include the period of time to which the representation applies.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (2) The use of terms in the comparative or superlative degree to describe any aspect of the business of the licensee, or any terms applicable to loans negotiated by the licensee, without such additional information as necessary to make the representation unambiguous in the context in which it is used.
- (3) A statement that the licensee represents any lender enumerated in Section 10133.1(a) of the Code unless the licensee has a contractual arrangement to act as agent or representative for such lender.
- (4) An implication contrary to the fact that the licensee will act in the capacity of a lender rather than as an agent or that a borrower will be able to obtain a loan without deduction from the principal amount for the payment of commissions, costs and expenses customarily attendant upon mortgage loan broker transactions.
- (5) A representation of a specific installment in repayment of a loan without an equally prominent disclosure of the following information about the loan:
- (A) Principal amount
  - (B) Simple annual interest rate
  - (C) Annual percentage rate
  - (D) Number, amount and period of payments scheduled to the date of maturity
  - (E) Balance due at maturity (balloon payment) if not fully amortized.
- (6) A representation of a specific installment payment, interest rate, annual percentage rate or other provision concerning a loan unless it is clearly indicated whether the advertised terms are available for first loans, junior loans or for both first and junior loans.
- (7) A representation or implication that loans are available on terms more favorable to the borrower than terms then generally available in the community through mortgage loan brokers or other sources for loan funds unless the advertised terms are in fact then available to a borrower without the application of undisclosed, special conditions or restrictions to qualify the borrower or the security for the loan.
- (8) A representation or implication that loans are available on terms more favorable to the borrower than terms then generally available in the community through mortgage loan brokers or other sources for loan funds unless the broker has previously presented evidence satisfactory to the commissioner that the advertising is not illusory or deceptive in the light of all relevant factors of the broker's business practices including the amount of loan funds prospectively available to meet borrower demands in response to the advertising.
- (9) A representation that loans are available at or to a maximum percentage of market value unless there is a disclosure as to how market value will be determined for purposes of a loan transaction.
- (10) A representation or implication that the credit rating or other personal financial data of the prospective borrower will not be a factor in determining eligibility for a loan unless the broker in fact neither conducts nor causes to be conducted any investigation or inquiry into any aspect of any prospective borrower's credit rating or into his personal financial circumstances for the purpose of determining his qualifications for a loan.
- (11) A representation or implication that a loan can or will be approved by telephone.
- (12) A representation implying that the Department or any other governmental agency has endorsed or approved any aspect of the licensee's business activities. A statement that the offering referred to in the advertisement is being made under authority of a permit issued by the Department or by the Department of Corporations without more, will not be considered to be a representation implying endorsement or approval by a governmental entity.
- (13) A representation or implication contrary to fact as to the number and location of offices maintained by the licensee for the conduct of his mortgage loan brokerage business.
- (14) Use of "investment plan", "growth plan", or similar term to describe a program of a licensee carrying on activities described in Section 10131.1 or Section 10237 of the Code unless a permit has been issued to the licensee for the program.
- (15) The use of "savings", "savings plan" or terms of similar import indicating that the licensee is engaged in business activities requiring a particular license, permit or authority unless the licensee then has such a license, permit or authority.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(16) A representation of a simple annual interest rate without an equally prominent disclosure of the annual percentage rate.

### 2849.01. Annual Report Format.

For reports submitted to the Department after December 9, 2000, the following format shall be used by a real estate broker who meets the criteria of section 10232 and/or 10229 of the Code for the annual report required by section 10232.2(c) and 10229(n).

### MORTGAGE LOAN/TRUST DEED ANNUAL REPORT (Business and Professions Code Section 10232.2(c) or 10229(n))

NAME OF REPORTING BROKER (CORPORATION OR INDIVIDUAL)

#### PRINCIPAL BUSINESS ADDRESS

This report covers mortgage loan brokerage and trust deed and real property sales contract transactions for the period from (month, day, year) to (month, day, year).

During the reporting period, mortgage loan/trust deed business activities were conducted by the reporting broker and his affiliates at the following address(es) in addition to the principal business address above:

#### Report Data

	Article 7 <sup>1</sup> Loans	Other Loans
<b>I. LOANS ORIGINATED AS AGENT</b> [B&P Code Section 10131(d)]		
TOTAL LOANS		
Number .....		
Aggregate Principal Amount.....	\$ _____	\$ _____
Total Commissions Received from All Loans Originated as Agent	\$ _____	\$ _____
A. MULTIPLE LENDER LOANS (FRACTIONALIZED) <sup>2</sup>		
1) Total Number of Loans .....		
2) Aggregate Principal Amount.....	\$ _____	\$ _____
3) Aggregate Number of Investors.....	_____	_____
B. LOANS TO REFINANCE <sup>3</sup>		
LOANS PREVIOUSLY NEGOTIATED BY REPORTING BROKER OR AFFILIATE <sup>4</sup>		
1) Number .....		
2) Aggregate Principal Amount.....	\$ _____	\$ _____
C. BALLOON PAYMENT AND INTEREST-ONLY LOANS		
1) Number .....		
2) Aggregate Principal Amount.....	\$ _____	\$ _____
<b>II. LOANS ORIGINATED AS PRINCIPAL (FUNDED BY BROKER) FOR RESALE</b> [B&P Code Section 10131.1]		
TOTAL LOANS		
Number .....		
Aggregate Principal Amount.....	\$ _____	\$ _____
Loan Origination Fees (Points) of all Loans Originated as Principal Funded for Resale .....	\$ _____	\$ _____
A. LOANS TO REFINANCE LOANS <sup>3</sup> PREVIOUSLY NEGOTIATED BY REPORTING BROKER OR AFFILIATE <sup>4</sup>		
1) Number .....	_____	_____

# REGULATIONS OF THE REAL ESTATE COMMISSIONER

2) Aggregate Principal Amount .....	\$ _____	\$ _____
<b>B. BALLOON PAYMENT AND INTEREST-ONLY LOANS</b>		
1) Number .....	_____	_____
2) Aggregate Principal Amount (at maturity) ..	\$ _____	\$ _____
<b>C. PRINCIPAL (BROKER FUNDED) LOANS RESOLD</b>		
1) Single Purchaser		
a) Number .....	_____	_____
b) Aggregate Selling Price .....	\$ _____	\$ _____
2) Multiple Purchasers (Fractionalized) <sup>2</sup>		
a) Number .....	_____	_____
b) Aggregate Selling Price .....	\$ _____	\$ _____
<b>III. COSTS AND EXPENSES PAID BY BORROWERS TO THE BROKER IN ORIGINATED LOAN TRANSACTIONS<sup>5</sup></b>		
Total .....	\$ _____	\$ _____
Retained by Broker or Affiliate for Services .....	\$ _____	\$ _____
<b>IV. LOANS FOR BROKER'S USE OR BENEFIT [B&amp;P Code Section 10231.2]</b>	<b>All Loans/Sales</b>	
A. Total Number .....	_____	_____
B. Number of Fractionalized Loans .....	_____	_____
C. Aggregate Amount Borrowed .....	\$ _____	_____
<b>V. SALES OF NOTES AS AGENT [B&amp;P Code Section 10131(e)]</b>		
<b>TOTAL LOANS</b>		
A. Number .....	_____	_____
B. Aggregate Selling Price .....	\$ _____	_____
C. Commissions Received .....	\$ _____	_____
D. Multi-Lender Sales (Fractionalized)		
1) Number of Loans .....	_____	_____
2) Aggregate Number of Lenders/Investors .....	_____	_____
3) Aggregate Selling Price .....	\$ _____	_____
4) Commissions Received .....	\$ _____	_____
<b>VI. RESALES AS PRINCIPAL OF NOTES PURCHASED BY BROKER</b>		
[B&P Code Section 10131.1]		
<b>TOTAL LOANS</b>		
A. Number .....	_____	_____
B. Aggregate Purchase Price .....	\$ _____	_____
C. Aggregate Resale Price .....	\$ _____	_____
D. Multi-Lender Resales (Fractionalized)		
1) Number of Loans .....	_____	_____
2) Aggregate Number of Investors .....	_____	_____
3) Aggregate Selling Price .....	\$ _____	_____
4) Commissions Received .....	\$ _____	_____
<b>VII. SALES OF REAL PROPERTY SALES (RPS) CONTRACTS<sup>7</sup> AS AGENT OR PRINCIPAL</b>		
[B&P Code Sections 10131(e) and 10131.1]		
A. Number .....	_____	_____
B. Aggregate Selling Price .....	\$ _____	_____
<b>VIII. NOTE AND RPS CONTRACT SERVICING</b>		
A. Total Number of Notes and/or Contracts Serviced During Reporting Period .....	_____	_____
B. Number of Fractionalized Notes Serviced .....	_____	_____
C. Total Dollar Amount of Payments Collected from the Borrowers During the Reporting Period including Payoffs <sup>8</sup> .....	\$ _____	_____

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

D. Total Dollar Amount of Payments Collected from the Borrowers or Fractionalized Loans During the Reporting Period, including Payoffs .....	\$ _____
E. Total Dollar Amount of Loans Serviced <sup>9</sup> .....	\$ _____
F. Total Dollar Amount of Fractionalized Loans Serviced <sup>9</sup> .....	\$ _____
G. Total Late Charges Received During the Reporting Period .....	\$ _____
H. Total Late Charges Retained by Broker .....	\$ _____
I. Number of Loans Prepaid .....	_____
J. Total Amount of Prepayment Penalties Paid by Borrowers .....	\$ _____
K. Total Amount of Prepayment Penalties Retained by Broker .....	\$ _____
L. Total Other Broker Charges for Servicing .....	\$ _____
M. Number of Notices of Default Filed .....	_____
N. Number of Trustee's Sales, Judicial Sales or Deeds in Lieu of Foreclosure Recorded .....	_____

### CERTIFICATION

To the best of my knowledge and belief the information contained in this report is true and correct.

\_\_\_\_\_  
SIGNATURE OF BROKER OR DESIGNATED LICENSED OFFICER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME OF BROKER OR DESIGNATED  
LICENSED OFFICER (REPORTING BROKER)

\_\_\_\_\_  
LICENSE NUMBER

\_\_\_\_\_  
NAME OF CORPORATION

\_\_\_\_\_  
BUSINESS TELEPHONE NUMBER

If reporting broker is an individual licensee, he/she must sign this report. If reporting broker is a corporate licensee, the corporation's designated licensed officer must sign this report.

### Footnotes

1. ARTICLE 7 LOANS—Loans of less than \$30,000 secured by first deeds of trust on dwellings and loans of less than \$20,000 secured by junior deeds of trust on dwellings.
2. MULTIPLE LENDER LOAN (FRACTIONALIZED)—A loan funded through the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction.
3. LOAN TO REFINANCE—A loan funded within 90 days of the maturity date of an existing obligation of the borrower in which 75 percent or more of the proceeds made available to the borrower are applied to pay off the existing obligation.
4. AFFILIATE—Any entity in which an individual reporting broker or an officer, director or shareholder of a corporate reporting broker has more than a nominal financial interest or from whom the reporting broker receives any form of compensation for the referral of business in connection with the reporting broker's mortgage loan activities. Should the affiliate meet the criteria of Section 10232, a separate report must be compiled and submitted for each entity.
5. COSTS & EXPENSES—For services enumerated in Section 10241(a) (appraisal fees, escrow fees, title charges, notary fees, recording fees, credit investigation fees) and any other charge made to the borrower. Total amount and amount retained by the broker, an affiliate or subsidiary.
6. A purchase or loan transaction in which the broker directly or indirectly obtained the use or benefit of the funds other than for commissions, fees, costs and expenses.
7. REAL PROPERTY SALES (RPS) CONTRACTS—As defined in Section 10029 of the Business and Professions Code:

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

"Real property sales contract" as used in this part is an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which does not require conveyance of title within one year from the date of formation of the contract.

8. Includes payments collected on behalf of obligors.
9. Outstanding principal of each note on the last day of the fiscal year or the reporting period.

### 2849.1. Reporting Transactions Pending at Close of Fiscal Year.

In preparing the report required by Section 10232.2(c) of the Code, a sale or loan transaction shall be considered as business conducted in the fiscal year in which the escrow for the transaction closed.

## Article 17. Prepaid Rental Listing Service

### 2851. Surety Bond Format.

A corporate surety bond provided to the Department by a prepaid rental listing service pursuant to Section 10167.7 of the Code shall be in substantially the following form:

#### PREPAID RENTAL LISTING SERVICE BOND

Bond No. \_\_\_\_\_

Premium \$ \_\_\_\_\_

Know all men by these presents:

That we, \_\_\_\_\_ as PRINCIPAL and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and authorized to transact the business of surety in the State of California as SURETY are held and firmly bound unto the State of California (OBLIGEE) in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for which payment, well and truly to be made, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, by these presents.

PRINCIPAL has applied to the Department of Real Estate of the State of California for a license to act as a Prepaid Rental Listing Service, or for the renewal of said license and is required by Section 10167.7 of the Business and Professions Code to have on file with the Department of Real Estate, a bond in the amount of \$10,000 for each licensed location. This bond is executed and tendered in accordance with Section 10167.7.

The condition of this obligation is that if PRINCIPAL satisfies any and all final judgments entered against PRINCIPAL as the result of any action undertaken pursuant to subdivision (f) of Section 10167.10, then this obligation shall be null and void. Otherwise it shall remain in full force and effect.

For value received, SURETY does hereby waive any right granted to SURETY by Section 2845 of the California Civil Code to require that OBLIGEE proceed independently against PRINCIPAL to enforce this obligation or that the underlying judgment creditor of PRINCIPAL pursue any other remedies for collection of said judgment.

This bond is continuous in form and shall remain in full force and effect and shall run concurrently with the term of the Rental Listing Service License issued to PRINCIPAL and for the term of any renewal thereof unless earlier terminated or cancelled by SURETY as provided by law.

I certify (declare) under penalty of perjury under the laws of the State of California that I have executed this agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL and SURETY have executed this agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**REGULATIONS OF THE REAL ESTATE COMMISSIONER**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

**2851.1. Cash Deposit Security Format.**

The following shall constitute an acceptable format for the creation and assignment of a cash deposit to the Commissioner pursuant to Section 10167.7 of the Code:

**PREPAID RENTAL LISTING SERVICE  
CASH DEPOSIT SECURITY**

\_\_\_\_\_ (ASSIGNOR), a prepaid rental listing service licensee whose principal licensed location is at:

\_\_\_\_\_  
\_\_\_\_\_

hereby assigns to the Real Estate Commissioner of the State of California (ASSIGNEE) all of ASSIGNOR'S right, title and interest in a cash deposit/certificate of deposit in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) identified as follows:

Name and/or Number \_\_\_\_\_

Depository/Issuer \_\_\_\_\_  
Name

Address \_\_\_\_\_

City and State \_\_\_\_\_

ASSIGNOR has applied to the Department of Real Estate of the State of California for a license to act as a prepaid rental listing service, or for the renewal of said license, and is required by Section 10167.7 of the Business and Professions Code to provide a cash deposit in the amount of \$10,000 for each licensed location. This assignment is made in accordance with and pursuant to Section 10167.7.

This assignment includes any and all rights arising out of insurance of the principal amount of the account by the Federal Deposit Insurance Corporation or other insurer, but ASSIGNOR retains for himself all rights to interest earned on the principal and all rights arising out of insurance of the unpaid interest earned on the principal amount.

ASSIGNOR hereby gives to ASSIGNEE or his duly appointed representative the authority to withdraw funds from the account at any time without notice to ASSIGNOR for the purpose of paying unsatisfied judgments in accordance with Section 10167.7. This authority of ASSIGNEE shall include the power to convert a Certificate of Deposit or similar evidence of a deposit to cash as necessary to make payments for the benefit of unsatisfied judgment creditors notwithstanding the fact that such conversion may result in an interest penalty.

The Certificate of Deposit or other certificate evidencing the above identified account shall be retained in the custody of ASSIGNEE while this assignment remains in effect. This assignment shall remain effective until ASSIGNEE shall determine that there is no longer any potential liability of ASSIGNOR under Section 10167.10 of the Code.

DATED \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of Assignor \*

\* If an account or certificate is in the name of a corporation, the assignment must be signed by an officer of the corporation.

**2852. Change of Office Location.**

(a) If a prepaid rental listing service (PRLS) licensee or a real estate broker operating a prepaid rental listing service under his broker license proposes to move either the principal location or main office to a different address, he shall, prior to effecting the move, give notice of the address and telephone number of the new principal location or main office in a manner reasonably calculated to reach all of the prospective tenants with whom the PRLS licensee or broker has contracts that have not expired.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(b) If a PRLS licensee or a real estate broker operating a prepaid rental listing service under his broker license proposes to move either a branch location or branch office to a different address, he shall, prior to effecting the move, give notice of the address and telephone number of the new branch location or branch office in a manner reasonably calculated to reach all of the prospective tenants previously supplied with listings of rental properties by the branch location or branch office under contracts that have not expired.

### **2852.1. Different Names for Branch Locations.**

If a licensee conducts a prepaid rental listing service business under different names or different fictitious business names at separate locations or branch offices within the boundaries of the same city or within ten miles of the boundary of that city, the name or fictitious business name under which each office or location is operated and the corresponding address of each office shall be set forth in the contract referred to in Section 10167.9 of the Code.

### **2853. Notice of Remedies for Failure to Refund.**

The clause required under subdivision (a)(8) of Section 10167.9 of the Code in a prepaid rental listing service contract shall appear in bold face type immediately below the RIGHT TO REFUND notice specified in Section 10167.10 of the Code and shall read as follows:

**“You may bring a small claims court action against the licensee for his/her refusal to make a refund on your demand of all or part of the fee paid by you under this contract. If the court finds that the licensee has acted in bad faith in refusing to make the refund, the court has the authority to award you up to five hundred dollars (\$500) in addition to damages actually sustained by you.”**

## **Article 18. Contracts, Writings and Other Documents**

### **2904. Disclosure of Compensation for Obtaining Financing.**

It shall constitute misrepresentation under Section 10176(a) of the Code for a real estate licensee who acts as the agent for either party in a transaction for the sale, lease or exchange of real property, a business opportunity or a mobilehome as described in Section 10131.6 of the Code, and who receives compensation, or who anticipates receiving compensation, from a lender in connection with the securing of financing for the transaction, to fail to disclose to both parties, prior to the closing of the transaction, the form, amount and source of compensation received or expected.

### **2905. Pest Control Documentation.**

In a real estate transaction subject to the provisions of Section 1099 of the Civil Code, the real estate broker acting as agent for the seller in the transaction shall effect delivery of the inspection report, certification and the notice of work completed, if any, to the transferee in accordance with said section.

If more than one real estate broker licensee is acting as an agent of the transferor in the transaction, the broker who has obtained the offer made by the transferee shall effect delivery of the required documents to the transferee unless the transferor has given written directions to another real estate broker licensee acting as agent of the transferor in the transaction to effect delivery.

If the agent cannot obtain the required documents to deliver to the transferee and does not have written assurance from the transferee that all of said documents have been received, the agent shall advise the transferee in writing of the transferee's rights under Section 1099.

The broker shall maintain a record of the action taken to effect compliance with this regulation in accordance with Section 10148 of the Business and Professions Code.

## **Article 18.5. Substantial Relationship and Rehabilitation Criteria**

### **2910. Criteria of Substantial Relationship.**

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

- (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.
- (2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state or local government.

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct, or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.

(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

(9) Contempt of court or willful failure to comply with a court order.

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or act were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

### **2911. Criteria of Rehabilitation (Denial).**

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

### **2912. Criteria of Rehabilitation (Revocation or Suspension).**

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

## **REGULATIONS OF THE REAL ESTATE COMMISSIONER**

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

### **Article 18.6. Monetary Penalty in Lieu of Suspension**

#### **2921. Procedures.**

(a) Licensees may petition in writing for a monetary penalty at any time after filing of an accusation and before the effective date of a decision.

(b) No specific form of petition is required. It may contain argument to support a grant of the petition or any other relevant material the petitioner desires to present to the Commissioner.

(c) Upon receipt of a timely petition, the Commissioner shall grant a stay of the effective date of the decision, if any, for a period of up to 30 days for the purpose of determining whether the public interest and welfare will be adequately served if the petition is granted.

(d) Any order granting a petition for a monetary penalty in lieu of a license suspension order shall be published in the "Real Estate Bulletin."

#### **2922. Payment.**

Payment of a monetary penalty shall be by means of a certified or cashier's check made payable to the Department of Real Estate.

### **Article 18.7. Standard Proposed Decision Language**

#### **2930. Standard Proposed Decision Language.**

The following language, terms and conditions will be used, as appropriate, in Proposed Decisions and Decisions of the commissioner in administrative adjudications conducted pursuant to Sections 11500, et seq. of the Government Code:

##### **1. Revocation:**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are revoked.

##### **2. Revocation With Right to Restricted License – Broker:**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

### **3. Revocation With Right to Restricted License – Salesperson:**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
  - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
  - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

### **4. Suspension Added to Revocation With Right to a Restricted License:**

Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for \_\_\_\_\_ days from the date of issuance of said restricted license.

### **5. Professional Responsibility Condition:**

Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

### **6. Conditional License Condition - Salesperson Only - (Accusation):**

Respondent's original real estate salesperson license was issued subject to the provisions of Section 10153.4 of the Business and Professions Code, and the restricted real estate salesperson license issued to Respondent shall be similarly limited, to wit: Respondent shall, within eighteen (18) months of the issuance of Respondent's original real estate salesperson license under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion,

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of Respondent's original real estate salesperson license. Said suspension shall not be lifted until Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the Respondent of lifting of the suspension.

### **7. Restitution Condition:**

Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, submit proof satisfactory to the Commissioner of payment of restitution in the amount of \_\_\_\_\_ to \_\_\_\_\_.

### **8. Reporting Condition (Broker Only):**

Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

### **9. Suspension (Broker and Salesperson):**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are suspended for a period of \_\_\_\_\_ (\_\_\_\_) days from the effective date of this Decision.

### **10. Suspension With All or a Portion Stayed (Broker and Salesperson):**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are suspended for a period of \_\_\_\_\_ (\_\_\_\_) days from the effective date of this Decision; provided, however, that \_\_\_\_\_ (\_\_\_\_) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

### **11. Suspension With Monetary Penalty in Lieu of Suspension Pursuant to Business and Professions Code Section 10175.2 (Broker and Salesperson):**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are suspended for a period of \_\_\_\_\_ (\_\_\_\_) days from the effective date of this Decision; provided, however, that if Respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$\_\_\_\_\_ for each day of the suspension for a total monetary penalty of \$\_\_\_\_\_.
2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.
3. No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.
4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

### **12. Denial of Broker License Application With Right to a Restricted Broker License. (Note: The continuing education condition should not be used in application cases):**

Respondent's application for a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

### **13. Denial of Salesperson License Application With Right to a Restricted Salesperson License (Unconditional). (Note: The continuing education condition should not be used in application cases):**

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **14. Denial of Application for Conditional Salesperson Application or Revocation of Conditional Salesperson License. (Note: A license is "conditional" when the respondent has not completed the two additional courses required by Section 10153.4):**

#### ***Denial: Restricted License:***

1. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.
2. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

#### ***Revocation: Restricted License.*** (Applicable if less than eighteen (18) months have passed since the issuance of the conditional license being revoked):

1. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the license revoked herein, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of issuance of the license revoked herein. Said suspension shall not be lifted unless prior to the expiration of the restricted license Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.
2. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

#### ***Revocation: Restricted License.*** (More than 18 months have passed since the issuance of the conditional license being revoked):

1. Prior to the delivery or mailing of Respondent's restricted license, Respondent shall submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.
2. If Respondent has not satisfied the requirements for an unqualified license within four years from the date of issuance of the restricted license revoked herein, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

### **15. Trust Fund Violations: Standard Terms and Conditions for a Restricted License:**

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violation(s) found in paragraphs \_\_\_\_\_ of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

### **16. Trust Fund Violations: Standard Terms and Conditions for a Suspended License:**

All licenses and licensing rights of Respondent are suspended for two years from the effective date of this Decision; provided, however, that the suspension shall be stayed upon the following terms and conditions:

1. Respondent's license and license rights shall be actually suspended for a period of \_\_\_\_\_ days. Respondent may, pursuant to Section 10175.2, petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the term of the actual suspension. (Note: The last sentence is optional.)
2. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
3. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for in condition "1", vacate and set aside the stay order including any further stay imposed pursuant to Section 10175.2. Should no order vacating the stay be made pursuant to this condition or condition "4" below, the stay imposed herein shall become permanent.
4. Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violation(s) found in paragraphs \_\_\_\_\_ of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, either in accordance with this condition or condition "3", the stay imposed herein shall become permanent.

### **Article 18.8. Voluntary Surrender of License**

#### **2940. Petition for Voluntary Surrender of License.**

(a) A licensee may petition the commissioner under Section 10100.2 of the Code to accept the voluntary surrender of his or her real estate license or license rights. The petition shall be in writing and shall contain the following:

- (1) A reference to the investigation or accusation giving rise to the petition.
- (2) An identification of the real estate licenses or license rights held by the petitioner.
- (3) An acknowledgment that the petitioner has read and agrees to the following as a condition of the commissioner's acceptance of the petition:

The filing of a petition shall be deemed to be an understanding and agreement by the licensee that upon acceptance by the commissioner all affidavits obtained in the investigation prior to the acceptance and all

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

allegations contained in an accusation filed pursuant to Section 11503 of the Government Code may be considered by the Department to be true and correct for the purpose of deciding whether or not to grant reinstatement of the license.

(b) Acceptance of a petition to surrender a license shall be pursuant to an Order issued by the commissioner. The commissioner may refuse to accept a surrender of a license if it is determined in the exercise of his or her discretion, that it would not be in the public interest to accept the surrender.

### Article 19. Escrows

#### 2950. When Broker Handles Escrow.

The following acts in the handling of an escrow by a real estate broker exempted from the provisions of the Escrow Law (by Section 17006(d) of the Financial Code) are prohibited and may be considered grounds for disciplinary action:

(a) Soliciting or accepting an escrow instruction (or amended or supplemental escrow instruction) containing any blank to be filled in after signing or initialing of such escrow instruction (or amended or supplemental escrow instructions).

(b) Permitting any person to make any addition to, deletion from, or alteration of an escrow instruction (or amended or supplemental escrow instruction) received by such licensee, unless such addition, deletion or alteration is signed or initialed by all persons who had signed or initialed such escrow instruction (or amended or supplemental escrow instruction) prior to such addition, deletion or alteration.

(c) Failing to deliver at the time of execution of any escrow instruction or amended or supplemental escrow instruction a copy thereof to all persons executing the same.

(d) Failing to maintain books, records and accounts in accordance with accepted principles of accounting and good business practice.

(e) Failing to maintain the office, place of books, records, accounts, safes, files and papers relating to such escrows freely accessible and available for audit, inspection and examination by the commissioner.

(f) Failing to deposit all money received as an escrow agent and as part of an escrow transaction in a bank trust account, or escrow account on or before the close of the next full working day after receipt thereof.

(g) Withdrawing or paying out any money deposited in such trustee account or escrow account without the written instruction of the party or parties paying the money into escrow.

(h) Failing to advise all parties in writing if he has knowledge that any licensee acting as such in the transaction has any interest as a stockholder, officer, partner or owner of the agency holding the escrow.

(i) Failing upon closing of an escrow transaction to render to each principal in the transaction a written statement of all receipts and disbursements together with the name of the person to whom any such disbursement is made.

(j) Delivering or recording any instrument which purportedly transfers a party's title or interest in or to real property without first obtaining the written consent of that party to the delivery or recording.

#### 2951. Record Keeping and Funds Handling.

The provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835 of these regulations shall apply to the handling of funds and the keeping of records by a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required.

### Article 21. Advance Fee Agreements

#### 2970. Advance Fee Materials.

(a) A person who proposes to collect an advance fee as defined in Section 10026 in the Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use.

(b) Material used in advertising, promoting, soliciting and negotiating an advance fee agreement shall not be approved if it:

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

- (1) Includes any representation which is false, misleading or deceptive.
- (2) Does not set forth a specific, complete description of the services to be rendered for the advance fee.
- (3) Does not set forth the total amount of the advance fee along with the date on which the fee shall become due and payable.
- (4) Contains any provision which purports to relieve or exempt the person collecting the advance fee from an obligation to fulfill verbal commitments and representations made by employees and agents of the person contracting for the advance fee.
- (5) Contains any provision which purports to give a guarantee that the real property or business opportunity in question will be purchased, leased or exchanged or that a loan secured by real property will be obtained as a result of the services rendered by the person collecting the advance fee.
- (6) Does not set forth a definite date for full performance of the services promised under the advance fee agreement.

(c) Not less than 10-point type shall be used in advance fee agreements.

### **2972. Accounting Content.**

Each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include at least the following information:

- (a) The name of the agent.
- (b) The name of the principal.
- (c) Description of the services rendered or to be rendered.
- (d) Identification of the trust fund account into which the advance fee has been deposited.
- (e) The amount of the advance fee collected.
- (f) The amount allocated or disbursed from the advance fee for each of the following:
  - (1) In providing each of the services enumerated under (c) above.
  - (2) Commissions paid to field agents and representatives.
  - (3) Overhead costs and profit.
- (g) In cases in which disbursements have been made for advertising, a copy of the advertisement, the name of the publication, the number of the advertisements actually published and the dates that they were carried.
- (h) In the case of an advance fee for the arrangement of a loan secured by a real property or a business opportunity, a list of the names and addresses of the persons to whom information pertaining to the principal's loan requirements were submitted and the dates of the submittal.

## **Article 24. Private Vocational School Approvals**

### **3000. Equivalent Courses of Study at Private Vocational Schools.**

(a) In making a determination under authority of section 10153.5 of the Code as to whether a course of study at a private vocational school is equivalent in quality to real estate courses offered by colleges and universities accredited by the Western Association of Schools and Colleges, the commissioner shall consider, but shall not be limited to the following criteria:

- (1) An attended course must provide at least 45 periods of classroom instruction, each of which shall be not less than 50 minutes duration. A correspondence course shall consist of not less than 15 separate lesson assignments.
- (2) (A) An attended course must provide for a final examination administered and supervised by the school in a classroom setting.  
(B) A correspondence course must provide for a final examination administered and supervised by a person designated by the school for that purpose. The school shall send the final examination materials to the person so designated and the completed final examination shall be returned to the school by the person so designated.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(3) The school must provide instructors, instructional material and classroom facilities adequate to achieve the objective of the course offered.

(4) The school shall maintain records for each student sufficient to allow for the preparation of a duplicate certificate upon request by a student.

(5) The school shall not use advertising or other promotional devices that are deceptive or misleading.

(6) The school shall, within 15 days of a student's successful completion of the course, deliver a document to the student evidencing such completion. The document shall contain the following information:

(A) Department of Real Estate course approval number.

(B) Name of student.

(C) Course title.

(D) Dates of course completion.

(E) Name and address of school.

The school may include such additional information in this document as it deems necessary.

(7) The school shall have an appropriate method of assessing student knowledge of the subject, such as, but not limited to, multiple choice, essay or oral examinations.

(b) The simultaneous instruction of two or more students in one of the courses enumerated in sections 10153.2, 10153.3 or 10153.4 of the Code constitutes a "private vocational school" as that term is used in section 10153.5.

### **3002. Application and Fee.**

(a) A person making application for approval by the commissioner of an equivalent course of study within the meaning of Sections 10153.2, 10153.4 or 10153.5 of the Code shall make application on a form prescribed by the Department and shall include therein such relevant information as the commissioner may require. The application shall be accompanied by the appropriate fee as provided in subdivision (c) hereof and include at least the following:

(1) The name, address and telephone number of the applicant.

(2) Summary of the course including:

(A) Type of course (resident lecture or correspondence/independent study).

(B) Course title.

(C) Complete course outline or syllabus with time schedule indicating total number of hours for course.

(D) Textbook(s) and student materials prescribed.

(E) Evidence of Private Vocational School approval or registration by the Bureau for Private Postsecondary and Vocational Education of the California Department of Consumer Affairs if the sponsor is not otherwise exempt from the requirement for such approval or registration or by the appropriate approval authority of the state in which the school is located shall be included with the course application.

(b) Any material change to an approved equivalent course of study shall be submitted by the school to the Department for approval prior to use.

A material change for purposes of this section is a deviation from an equivalent course of study approved by the Department, including a change in curriculum, course length, workbooks, texts or syllabi, but not including changes designed exclusively to reflect recent changes in statutes, regulations or decisional law.

(c) The fees for applications for approval of equivalent courses of study under Sections 10153.2, 10153.3 and 10153.4 of the Code and for material changes to previously approved courses shall be the fees prescribed in Section 10209 of the Code.

### **3003. Course Disapproval.**

(a) If the commissioner determines that a course of study previously approved as equivalent is no longer equivalent in quality to courses offered by colleges and universities accredited by the Western Association of Schools and Colleges, or if the commissioner determines that an instructor or lecturer for the course is no longer qualified, or that the course sponsor has engaged in activity violating the provisions of Section 3004, the

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

commissioner shall give written notice of withdrawal of approval setting forth the reasons for the determination. If the commissioner determines, following an application for course approval, that the course will not provide applicants for real estate broker or real estate salesperson licenses with knowledge and understanding equivalent to that provided through courses offered by colleges and universities accredited by the Western Association of Schools and Colleges or if the commissioner determines that the instructor for the course is unqualified, the commissioner shall give written notice of denial of approval setting forth the reasons for the determination. Withdrawal or denial of approval will be effective 30 days after the notice of withdrawal or denial is received by the sponsor unless the sponsor earlier files a written request for hearing on the withdrawal or denial action. If the request for hearing is received by the commissioner before 30 days after the date of receipt of notice of withdrawal by the sponsor, the withdrawal or denial of approval shall not be effective unless and until ordered by the commissioner pursuant to findings and conclusions reached after hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be commenced within 30 days after receipt of the request for hearing unless continued to a later date by order of the commissioner or by agreement of the parties. In a hearing on an order of withdrawal issued by the commissioner, the burden of proving that the course is no longer equivalent in quality shall be on the commissioner. In any hearing on an order of denial issued by the commissioner, the burden of proving the equivalency of the proposed course of study shall be on the applicant.

### (b) Petition for Reinstatement.

(1) The sponsor of an offering for which approval has been withdrawn pursuant to subdivision (a) may, after a period of not less than one year has elapsed from the effective date of the withdrawal of approval, petition the commissioner in writing for reinstatement of approval of the offering. The petitioner shall be given the opportunity to present in writing argument and other evidence, statements or matters in support of the petition. The commissioner shall decide the petition and the decision shall include the reasons therefor.

(2) Upon a showing of good cause, the commissioner may allow the filing of a petition for reinstatement prior to the expiration of one year from the effective date of the withdrawal of approval.

### **3004. Advertising and Promotion of Equivalent Courses of Study.**

The use of advertising or promotional material by or on behalf of the private vocational school or other sponsor of an equivalent course of study will be considered by the commissioner to be deceptive or misleading if it does not comply with the following standards:

(a) An advertisement shall clearly and conspicuously identify the entity offering an equivalent course of study as a private vocational school or the sponsor of a supervised course of study or other approved equivalent course of study and shall include the name of the entity.

(b) Advertising which makes reference to courses of study approved by the commissioner shall identify the specific course or courses that have been approved by listing the Department's course approval number.

(c) No advertising or materials, including oral representations, promoting approved equivalent courses shall contain language which implies or states, directly or indirectly, that a course can be completed in less time than the number of hours for which it is approved.

(d) No advertising or materials, including oral representations, shall include false or misleading statements or representations.

## **Article 25. Continuing Education Requirements**

### **3005. Definitions.**

As used in this article, the following definitions will apply:

(a) "Clock hours" means 50 minutes actually spent in any combination of presenting course content, seminar, conference discussions, or workshop activity.

(b) "Approval" or "approved" with reference to an offering means a determination by the Department that the appropriate hours of continuing education credit will be given to licensees who have successfully completed the course within the time period specified by statute.

(c) "Final examination" means the test by which the sponsor, after completion of a correspondence offering, determines whether a participant has successfully completed the offering according to standards previously approved by the Department.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(d) "Material change" as used in Section 3007.2 means a significant deviation, in one or more aspects, from the offering as approved by the Department including a change in curriculum, course length, workbooks, texts, or syllabi, but not including changes designed exclusively to reflect recent changes in statutes, regulations or decisional law.

(e) "Completed" as used in Sections 3006, 3006.1, and 3013 in reference to a correspondence continuing education offering, means the date of successful completion of a final examination.

### **3006. Criteria for Approval of Offerings.**

In acting on an application for approval of a continuing education offering, the commissioner shall apply, but shall not be limited to the application of, the following criteria:

(a) The offering shall have at least one successive clock hour of instruction.

(b) For other than a correspondence course offering, participants shall be physically present.

(c) A correspondence offering shall have an appropriate form of examination, such as, but not limited to, multiple choice, essay or oral examinations.

(d) Lecturers and Instructors shall be fully qualified to undertake the level of instruction that they are assigned and shall possess appropriate degrees or credentials, such as, but not limited to, a bachelor's degree in a related field to that in which the person is to teach, and/or have demonstrated professional achievement in the major field or fields offered.

(e) A correspondence course shall consist of adequate study materials to assure that the course cannot be completed in less time than the number of hours for which it is approved.

(f) Every sponsor shall maintain on file with the commissioner a current address.

### **3006.1. Expiration of Approval.**

If an offering had approval at the time of registration by a licensee, credit for the offering shall be given to the licensee at the time of license renewal notwithstanding the fact that approval had expired and had not been renewed or reinstated at the time that the applicant successfully completed the offering.

### **3007. Application for Offering Approval.**

An application for approval of a continuing education offering shall be made on a form prescribed by the Department not less than 90 days before the proposed commencement date of the offering. The application shall be accompanied by the fee and include at least the following:

(a) The name, address and telephone number of the applicant.

(b) Summary of the offering including:

(1) Title.

(2) Textbook(s) and student materials prescribed.

(3) Outline or syllabus.

(4) A statement whether the offering is intended to comply with Business and Professions Code section 10170.5(a) (1), (2), (3), (4), (5) or (6).

(5) Disclosure of the method of offering presentation.

### **3007.3. Final Examination Rules For Correspondence Offerings**

(a) Sponsors shall establish and participants shall observe the following final examination rules for approved correspondence offerings:

(1) The final examination shall provide for the testing, examination or evaluation of participants. The sponsor shall take steps to protect the integrity of the examination and to prevent cheating in an examination.

(2) The examination shall not be taken by participants until completion of the instructional portion of the correspondence offering.

(b) A violation of a final examination rule by the sponsor or the sponsor's representative administering the examination shall constitute grounds for denial or withdrawal of approval of the offering.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **3007.6. Advertising and Promotional Material.**

(a) All advertising and promotional material for a continuing education offering shall:

- (1) Not include false or misleading statements or representations.
- (2) Classify the offering in accordance with Section 10170.5(a) of the Code.

### **3008. Offerings Not To Be Approved.**

The commissioner shall not approve a proposed continuing education offering that includes any of the following subject matter or conditions:

- (a) Offerings which do not address the subject matter areas set forth in Business and Professions Code section 10170.5.
- (b) Sales promotion.
- (c) That portion of any offering devoted to the consuming of meals or to transporting participants to and from sites to be viewed or inspected as part of the offering.
- (d) Any offering for which approval has been denied or withdrawn pursuant to section 3010.
- (e) Any offering substantially similar to and offered by the sponsor of an offering for which approval has been denied or withdrawn pursuant to section 3010.

### **3009. Fees.**

(a) Approval by the Department of a continuing education offering shall be for a term of two years from the date of approval or from a date specified by the Department in granting the approval. The fee for processing the application for approval of an offering of three or more hours duration shall be \$500. The fee for processing the application for approval of an offering of less than three hours duration shall be \$350.

(b) The fee for processing a petition for continuing education credit based upon a claim of equivalency by the petitioner pursuant to subdivision (c) of Section 10170.4 of the Code shall be \$60.

### **3010. Denial or Withdrawal of Approval.**

(a) If the commissioner determines that a previously-approved continuing education offering no longer meets the prescribed statutory and regulatory standards for approval, or if the commissioner determines that an instructor or lecturer for the course is no longer qualified, or that the course sponsor has engaged in activity violating the provisions of Article 25 (commencing with section 3005) of these regulations or has engaged in conduct which would have warranted the denial of an application for approval or withdrawal of approval of a continuing education offering, or the course differs materially from that which was previously approved, the commissioner shall give written notice of withdrawal of approval setting forth the reasons for the determination. If the commissioner determines, following an application for course approval, that the course will not meet the prescribed statutory and regulatory standards for approval or if the commissioner determines that the instructor for the course is unqualified, the commissioner shall give written notice of denial of approval setting forth the reasons for the determination. Withdrawal or denial of approval will be effective 30 days after the notice of withdrawal or denial is received by the sponsor unless the sponsor earlier files a written request for hearing on the withdrawal or denial action. If the request for hearing is received by the commissioner before 30 days after the date of receipt of notice of withdrawal by the sponsor, the withdrawal or denial of approval shall not be effective unless and until ordered by the commissioner pursuant to findings and conclusions reached after hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be commenced within 30 days after receipt of the request for hearing unless continued to a later date by order of the commissioner or by agreement of the parties. In a hearing on an order of withdrawal issued by the commissioner, the burden of proving that the course does not meet the prescribed statutory and regulatory standards for approval shall be on the commissioner. In a hearing on an order of denial issued by the commissioner, the burden of proving that the course meets the prescribed statutory and regulatory standards for approval shall be on the applicant.

(b) Petition for Reinstatement.

- (1) The sponsor of an offering for which approval has been withdrawn pursuant to subdivision (a) may, after a period of not less than one year has elapsed from the effective date of the withdrawal of approval, petition the commissioner in writing for reinstatement of approval of the offering. The petitioner shall be given the opportunity to present in writing argument and other evidence, statements or matters in support of the



## REGULATIONS OF THE REAL ESTATE COMMISSIONER

petition. The commissioner shall decide the petition and the decision and the decision shall include the reasons therefor.

(2) Upon a showing of good cause, the commissioner may allow the filing of a petition for reinstatement prior to the expiration of one year from the effective date of the withdrawal of approval.

### **3011. Equivalent Activities Criteria.**

(a) The primary consideration in determining whether a specific activity qualifies as an acceptable alternative to attendance at approved continuing education offerings is that it must include either presentation, development, authorship or research of information and materials designed to contribute directly to assuring that licensees maintain a reasonable currency of knowledge as a basis for a level of real estate practice as set forth in Business and Professions Code Section 10170.4.

(b) Equivalent activities may include but not be limited to:

(1) Attendance at courses not approved by the Commissioner.

(2) Instructing others in approved continuing education for real estate license renewal.

(3) Instruction or presentation of real estate related topics if the petitioner can demonstrate that the material conveyed contained reasonably current information designed to assist real estate licensees in providing a high level of consumer protection or service.

(4) Authorship of published professional articles, periodicals or books on current real estate procedures and law.

(c) Activities engaged in during the course of a licensee's normal occupation shall not be acceptable for a claim of equivalency unless such activities comply with subsections (a) and (b).

(d) Development of real estate education programs shall be given continuing education credit if the program would otherwise meet the requirements necessary for approval for continuing education credit.

(1) Sole authorship or development of a real estate educational program shall be credited upon an approved petition, with two hours continuing education credit for each hour of the program entitled to continuing education credit.

(2) Multiple authorship and development of a real estate educational program shall be credited, upon approval of a petition, based on the percentage each author or developer contributed to the total offering.

### **3011.1. Petitions for Equivalency for Course Instruction.**

(a) For instruction of real estate related courses not approved for continuing education, submit a statement under penalty of perjury which includes at least the following information:

(1) The petitioner's qualifications to teach the course.

(2) The title of the course.

(3) The date and location the instruction took place.

(4) Clock hours of instruction.

(5) Titles and description of instruction materials used including the date of publication, and an outline or syllabus of the course.

(6) Any other information useful in determining that the course will contribute to current knowledge as set forth in Business and Professions Code Section 10170.4.

(7) A statement by the course sponsor or school that the petitioner taught the course.

(b) Instructors of approved continuing education courses may receive a certificate of completion for the number of hours actually spent in instruction at one presentation of the course.

### **3011.2. Petitions for Equivalency for Authorship of Articles or Books.**

(a) Submit a copy of the published article or book.

(b) Submit a statement signed under penalty of perjury which includes at least:

(1) The date of publication of the article or book.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(2) An explanation of how the material published meets the criteria of Section 3011.

### **3011.3. Petitions for Equivalency for Development of Real Estate Programs, Laws, and Research.**

(a) If the claim for continuing education credit is based upon development of education programs, submit a statement under penalty of perjury including at least the following information:

- (1) A clear and complete description of the education program.
- (2) A description of the role of the petitioner in developing the program.
- (3) The number of hours the petitioner devoted to development of the program.
- (4) The period during which the program was developed.
- (5) An explanation of how the development of the program meets the standard of Section 3011.

(b) If the claim involves development of real estate law or research, submit a statement under penalty of perjury that includes at least:

- (1) A detailed description of the law affected or the research performed.
- (2) The number of hours devoted to the research or development of law.
- (3) An explanation of how the petitioner's participation meets the standard set forth in Section 3011.
- (4) A copy of the research report or of the law developed shall be attached to the petition, if the report or law exists. If research support data is not available, the Commissioner may request whatever additional information is needed to support the claim.

### **3011.4. Petitions for Equivalency for Attendance at Unapproved Programs.**

(a) The Commissioner, when acting upon a petition for continuing education credit for completing a course that is not approved, shall apply the criteria set forth in Section 3006.

(b) The applicant shall submit a petition under penalty of perjury including at least the following information:

- (1) The name, address, and telephone number of the course sponsor or school.
- (2) The title of the course.
- (3) The title, publisher, and date of publication of any text or course material used.
- (4) The number of clock hours attended.
- (5) Any outline or syllabus.
- (6) For correspondence courses a final grade report for the final examination or evaluation and a list of reading assignments with page references.

### **3012. Extension Conditions.**

An extension of the time for completing the continuing education requirements may be obtained by submitting with the regular renewal application evidence showing that applicant was unable to comply with the continuing education requirements. Such evidence may be (1) health reasons preventing attendance, (2) active duty in the military service with assignment to a permanent duty station outside of the state during the last 18 months of a license period, or (3) other compelling cause beyond the control of the applicant while engaged in the real estate business.

The Commissioner may extend an otherwise expired license while investigating such evidence for not to exceed 90 days if he finds applicant can reasonably be expected to be found to meet minimum requirements for renewal under this Article.

### **3012.2. Record Keeping.**

The sponsor shall maintain a record of attendance of each participant, for a period of five years, sufficient to allow for the preparation of a duplicate certificate upon request by a participant.

### **3013. License Renewal Procedure.**

In making application for renewal of a real estate license, the applicant shall provide such information as the Department may require concerning continuing education offerings that the applicant has completed within the four years immediately preceding expiration of the license or in the case of an application made pursuant to Section 10201 of the Code within the four years immediately preceding the date that the application is submitted

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

to the Department. If requested by the Department, the applicant shall submit certificates of attendance or certified copies thereof from sponsors of approved offerings to substantiate information provided by the applicant.

### Article 26. Recovery Account

#### 3100. Definitions.

As used in this Article, the following definitions will apply:

- (a) "Recovery Account" means the separate account in the Real Estate Fund established pursuant to Section 10450.6 of the Code for purposes of carrying out the provisions of Chapter 6.5 of the Real Estate Law.
- (b) "Application" means an application for payment from the Recovery Account filed with the Department pursuant to Section 10471(a) of the Code.
- (c) "Party" means either the claimant, the judgment debtor, or the Department.
- (d) "Claimant" means an aggrieved person who filed an application pursuant to Section 10471(a) of the Code.
- (e) "Person" includes corporation, partnership, company or firm.
- (f) "Final Judgment" means a judgment, arbitration award, or criminal restitution order for which the period for appeal has expired, enforcement of which is not barred by the order of any court or by any statutory provision, and which has not been nullified or rendered void by any court order or statutory provision.
- (g) "Court of Competent Jurisdiction" means a small claims, municipal or superior court of the State of California, or a United States district court or United States bankruptcy court sitting to conduct its affairs within the boundaries of the State of California.
- (h) "County in Which a Judgment Was Rendered" means the county within California in which the court issuing the judgment or restitution order sits or, if the claim is based on an arbitration award, the county in which the arbitration was conducted, or in which the claimant resides.
- (i) Where appropriate to the context the singular number includes the plural and the plural number includes the singular.

#### 3101. Application for Payment from Recovery Account.

- (a) An application for payment from the Recovery Account shall be made on a form prescribed by the Department, shall contain the items specified by Section 10471(c) of the Code, and shall contain all of the information specified in Section 3102, except as provided in subdivision (b) of this Section. The application shall be verified by the claimant in the manner specified in Section 446 of the Code of Civil Procedure for the verification of a pleading. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.
- (b) The claimant may submit with the application less than all of the information defined by Section 3102 of these regulations as constituting a substantially complete application if the claimant believes that the information submitted with the application is sufficient for the Department to determine whether the application qualifies under Sections 10470 through 10481 of the Code for payment from the Recovery Account. However, an application will not be deemed substantially complete within the meaning of Section 3102 of these regulations unless:
  - 1. The Department determines that what has been submitted is sufficient for it to make a determination whether the application qualifies for payment from the Recovery Account and so notifies the claimant as provided in Section 3105 of these regulations; or
  - 2. The application and supporting information meet all of the requirements specified in Section 3102 of these regulations.
- (c) If any documents or other attachments are submitted with the application, the application shall contain a verification by the claimant that the documents are true and correct copies of the originals, and if such documents purport to be copies of documents filed in court that they are true and correct copies of the originals filed with the court.
- (d) The application shall contain the name and address of the claimant, and if the claimant is not being represented by an attorney in the filing of the application, a telephone number where the claimant can be reached

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

during regular business hours. If the claimant is represented by an attorney in filing of the application, the application shall contain the name, business address, and telephone number of the attorney.

### **3102. Substantially Complete Application.**

Except as provided in Section 3101 of these regulations, an application for payment from the Recovery Account is "substantially complete" within the meaning of Section 10471.2(b) of the Code if it contains all of the documents and information enumerated below:

- (a) Proof that the judgment debtor was served with the Notice and Application.
- (b) A copy of the judgment showing it to be a final judgment as defined in this Article, and any findings of facts, conclusions of law, jury verdicts, jury special verdicts, statements of decisions, memorandum decisions, or any other indication by the court or jury, as the case may be, of its decision and the reasons for the decision. If the original judgment was appealed, copies of the appellate decision and remittitur.
- (c) Copies of the original complaint, answer, cross-complaints, answers to cross-complaints, and all amendments or other subsequent versions of any of those documents.
- (d) Copies of any pre-trial or post-trial briefs or settlement conference statements.
- (e) A listing of all depositions and interrogatories taken in the underlying action, describing the party or parties taking the deposition or propounding the interrogatories, the deponent or person responding to interrogatories, and all persons present at any deposition.
- (f) Copies of any demurrers or motions for summary judgment, supporting documents, and rulings thereon.
- (g) Copies of all documents reflecting the terms of the underlying transaction, including for example offers, counteroffers, escrow instructions, closing statements, deeds, notes and deeds of trust.
- (h) A detailed narrative description by the claimant under penalty of perjury of all the facts of the underlying transaction, including how he or she was damaged by the judgment debtors, and the roles of all other persons involved in the transaction (such as other brokers or salespersons, sellers, and buyers).
- (i) A description by the claimant of the basis for each element of damages.
- (j) If the only judgment debtor was a salesperson, a statement as to why the employing broker was not either sued or taken to judgment.
- (k) If any codefendants were dismissed from the underlying lawsuit, a statement of the reason for dismissal as to each such codefendant.
- (l) A list of the names of any witnesses who testified at the underlying trial and the present or last known addresses of the witnesses to the extent known by the claimant.
- (m) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the assets of the judgment debtor and the assets of all other persons liable to be sold or applied to the losses suffered by the claimants, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to the losses suffered by the claimant.
- (n) If the claimant claimed any loss related to the transaction as a deduction on his or her tax return or returns, a description of the amount of the tax benefit derived therefrom.
- (o) A statement whether the judgment debtor is known to have filed bankruptcy. If so, a statement whether the claimant was named as a creditor in the bankruptcy, filed a claim in the bankruptcy, and pursued an adversary complaint to have the debt determined to be nondischargeable. If the judgment debtor filed bankruptcy and the claimant failed to take any of the foregoing actions, a statement as to why the claimant failed to take such actions.
- (p) Abstracts of judgment bearing evidence of having been recorded in the county or counties in which the judgment debtor may possibly have assets.
- (q) If any of the above items are not included in the initial application, or are requested in a deficiency letter and not supplied, a statement under penalty of perjury that the claimant has made a diligent effort to locate and produce the items but has been unable to locate them or has found that they do not exist.
- (r) All documents or copies of documents submitted to meet the requirements of this section must be clear and legible.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

(s) Certification by the claimant that all documents submitted are true and correct copies of the originals, and if such documents purport to be copies of documents filed in court, that they are true and correct copies of the originals filed with the court.

### **3103. Response by Judgment Debtor.**

(a) The response by a judgment debtor must contain a verification that a copy of the response was sent to the claimant, or if the claimant is represented by an attorney, to the claimant's attorney, at the address specified in the application for the claimant or his or her attorney.

(b) If the judgment debtor is not represented by an attorney in objecting to payment of the application, the response must contain the judgment debtor's name, the address at which he or she wishes to receive correspondence and notices relating to the application, and a telephone number where he or she can be reached during regular business hours. If the judgment debtor is represented by an attorney in objecting to the application, the response must contain the name, business address, and telephone number of the attorney.

### **3104. Subsequent Service of Correspondence and Notices.**

After initial service of the application on the Department and the judgment debtor by the claimant as provided by Section 10471(b) and 10471.1(a) and (b), and after service of a response by the judgment debtor as provided by Section 10471.1(c) of the Code and Section 3103 of these regulations, all parties shall be served with subsequent correspondence and notices by first class mail as follows:

(a) The Department shall be served at:

Department of Real Estate  
Recovery Account Unit  
P.O. Box 187007  
Sacramento, CA 95818-7007

(b) The claimant shall be served at his or her address as specified in the application, or if the claimant is represented by an attorney, at the address of the attorney as specified in the application.

(c) The judgment debtor shall be served at his or her address as specified in the response, or if the judgment debtor is represented by an attorney, at the address of the attorney as specified in the response.

If the claimant or judgment debtor later wishes to be served at an address other than as specified above, such party shall notify the other parties by first class mail of the new address.

### **3106. Procedures To Be Followed When Judgment Debtor Has Filed a Response.**

(a) A judgment debtor who has filed a response objecting to payment to a claimant from the Recovery Account may submit written argument setting forth in detail the factual and legal bases upon which he or she believes the application should be denied. Such argument may be submitted at any time from the filing of the response until 30 days after the date of mailing of the Notice set forth in Section 10471.1(c) of the Code, and shall be served upon the Department and the claimant as specified in Section 3104 of these regulations.

(b) The claimant shall have 30 days after the mailing of argument by the judgment debtor in which to submit his or her own argument in favor of payment. Such argument by the claimant shall be served upon the Department and the judgment debtor as provided in Section 3104 of these regulations.

### **3107. Unreasonable Delay by Claimant in Responding To Deficiency Letter.**

(a) In the event that the Department has mailed one or more itemized lists of deficiencies to a claimant as provided by Section 10471.2(a) of the Code, and if after an unreasonable length of time the Department has received no response to the latest such list of deficiencies, the Department may notify the claimant that unless the application is substantially complete within a specified period of time of not less than 30 days, the application will be denied.

(b) The determination of what constitutes an unreasonable length of time shall be within the discretion of the Commissioner, taking into account the degree of difficulty in meeting the deficiencies specified. However, an "unreasonable length of time" shall not be deemed to be less than six months after the last mailing of a list of deficiencies.

(c) If no response has been received from the claimant after the passing of the deadline specified by the Department pursuant to subdivision (a) of this section, the Commissioner may deny the application.

## REGULATIONS OF THE REAL ESTATE COMMISSIONER

### **3109. Procedure Upon Filing of Writ of Mandamus by Judgment Debtor.**

(a) If the decision of the Commissioner is to make a payment out of the Recovery Account, and the judgment debtor files a writ of mandamus as provided in Section 10471.5(c) of the Code, no payment shall be made of the pending application unless and until the writ of mandamus has been denied and such denial has become final.

(b) If such writ of mandamus is granted on the basis that the claimant has not met the requirements for payment from the Recovery Account, the application shall be denied.